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FEDERAL REGISTER

Vol. 77 Wednesday,
No. 40 February 29, 2012

Pages 12157–12436

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, March 13, 2012
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

RIN 3245–AG42

Disaster Assistance Loan Program; Maximum Term for Disaster Loans to Small Businesses With Credit Available Elsewhere

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Direct final rule.

SUMMARY: SBA is amending its disaster assistance regulations to reflect a statutory change to the disaster assistance program contained in the Consolidated Appropriations Act, 2012. The change extends the maximum term of an SBA disaster loan to small businesses with credit available elsewhere from three years to seven years. This direct final rule conforms the regulations to the Act by adopting the new statutory requirement without change.

DATES: This rule is effective April 16, 2012 without further action, unless significant adverse comment is received by March 30, 2012. If significant adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by RIN 3245–AG42, by any of the following methods: (1) Federal Rulemaking Portal: *http://www.regulations.gov,* following the specific instructions for submitting comments; (2) Fax: (202) 481–2226; or Email: *James.Rivera@sba.gov;* or (3) Mail/Hand Delivery/Courier: James E. Rivera, Associate Administrator for Disaster Assistance, 409 3rd Street SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Roger B. Garland, Office of Disaster Assistance, 202–205–6734 or *Roger.Garland@sba.gov*.

SUPPLEMENTARY INFORMATION: Section 7(b) of the Small Business Act, 15 U.S.C. 636(b), authorizes SBA to make long-term disaster loans to homeowners, renters, businesses, and non-profit organizations that have been adversely affected by a declared disaster. The Consolidated Appropriations Act, 2012, Public Law 112–74, Div. C, title V, section 531, enacted December 23, 2011, amended the Small Business Act to increase the maximum loan maturity from three years to seven years for business disaster victims that have been determined to have access to credit elsewhere.

SBA is amending section 123.203 to incorporate this change. The change applies to business physical loans only. For economic injury loans, businesses with credit elsewhere remain ineligible. The new seven year term for disaster loans to businesses determined to have credit available elsewhere will apply to disasters declared on or after December 23, 2011, the enactment date of the statutory amendment.

Consideration of Comments

SBA believes that this rule is routine and non-controversial since it merely implements changes required by statute, and SBA anticipates no significant adverse comments to this rulemaking. If SBA receives any significant adverse comments, it will publish a timely withdrawal of this direct final rule.

Compliance With Executive Orders 12866, 12988, and 13132 and the Paperwork Reduction Act (44 U.S.C., Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this direct final rule does not constitute a significant regulatory action under Executive Order 12866. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have preemptive effect. The final rule will have retroactive effect to the enactment date of the statutory amendment. The new seven year term for direct disaster loans to businesses determined to have credit available elsewhere will apply to disasters declared on or after December 23, 2011.

Executive Order 13132

For the purposes of Executive Order 1312, the direct final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, SBA determined that this direct final rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act (44 U.S.C. Chapter 35)

For the purpose of the Paperwork Reduction Act, 44 U.S.C. chapter 35, SBA has determined that this direct final rule would not impose any new reporting or recordkeeping requirements.

Regulatory Flexibility Act (5 U.S.C. 601–612)

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, including small businesses. According to the RFA, when an agency issues a rule, the agency must prepare an analysis to determine whether the impact of the rule will have a significant economic impact on a substantial number of small entities. However, the RFA allows an agency to certify a rule in lieu of preparing an analysis if the rulemaking is not expected to have a significant impact on a substantial number of small entities. This rule only makes a conforming amendment to recent legislation on the disaster loan program, and does not implement new agency policies. The amendment will affect small entities; however SBA has determined that the amendment will not have a significant economic impact on a substantial number of such entities.

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs—business. Reporting and recordkeeping requirements, Small businesses.

For reasons set forth in the preamble, the SBA amends 13 CFR part 123 as follows:

PART 123—DISASTER LOAN PROGRAM

■ 1. The authority citation for part 123 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 636(d), 657n; Pub. L. 102–395, 106 Stat. 1828, 1864; Pub. L. 103–75, 107 Stat. 739; and Pub. L. 106–50, 113 Stat. 245.

■ 2. Amend § 123.203(a) by revising the fourth sentence of paragraph (a) to read as follows:

§ 123.203 What interest rate will my business pay on a physical disaster business loan and what are the repayment terms?

(a) * * * The maturity of your loan depends upon your repayment ability, but cannot exceed seven years if you have credit elsewhere. * * *

* * * * *

Dated: February 17, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–4760 Filed 2–28–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0994; Directorate Identifier 2010–NM–143–AD; Amendment 39–16949; AD 2012–03–08]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) airplanes. That AD currently requires repetitive detailed inspections for cracking or deformation, or pulled or missing fasteners, on the lower panel of the left- and right-hand main landing gear (MLG) doors, as applicable, and corrective actions if necessary. That AD also reduces the repetitive inspection interval for certain airplanes. This new AD adds a new modification of the MLG door configuration, and removes certain airplanes from the applicability. This AD was prompted by further analysis of the MLG door by the manufacturer. We are issuing this AD to prevent failure of the lower panel of the MLG door, departure of the lower panel from the airplane, and consequent damage to airplane structure, which could adversely affect the airplane's continued safe flight and landing.

DATES: This AD is effective April 4, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of April 4, 2012.

ADDRESSES: For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Aziz Ahmed, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; phone: 516–228–7329; fax: (516) 794–5531; email: *aziz.ahmed@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2006–14–05, Amendment 39–14676 (71 FR 38979, July 11, 2006). That AD applies to the specified products. The NPRM was published in the **Federal Register** on October 5, 2011 (76 FR 61633). That NPRM proposed to continue to require repetitive detailed inspections for cracking or deformation, or pulled or missing fasteners, on the lower panel of the left- and right-hand main landing gear (MLG) doors, as applicable, and corrective actions if necessary. That NPRM also proposed to reduce the repetitive inspection interval for certain airplanes. In addition, that NPRM proposed to add a new modification of the MLG door configuration, and remove certain airplanes from the applicability.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comment received. The Air Line Pilots Association International supports the NPRM (76 FR 61633, October 5, 2011).

Explanation of Changes Made to This AD

We have revised certain headers throughout this AD. We have also revised the wording in paragraphs (q) and (s) of this AD; this change has not changed the intent of these paragraphs.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously—and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (76 FR 61633, October 5, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 61633, October 5, 2011).

Costs of Compliance

We estimate that this AD affects about 220 products of U.S. registry.

The actions that are required by AD 2006–14–05, Amendment 39–14676 (71 FR 38979, July 11, 2006), and retained in this AD take about 3 work-hours per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $255 per product.

We estimate that it will take about 115 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the AD on U.S. operators to be $2,150,500, or $9,775 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2006–14–05, Amendment 39–14676 (71 FR 38979, July 11, 2006), and adding the following new AD:

2012–03–08 Bombardier Inc.: Amendment 39–16949; Docket No. FAA–2011–0994; Directorate Identifier 2010–NM–143–AD.

(a) Effective Date

This airworthiness directive (AD) is effective April 4, 2012.

(b) Affected ADs

This AD supersedes AD 2006–14–05, Amendment 39–14676 (71 FR 38979, July 11, 2006).

(c) Applicability

This AD applies to Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes having serial numbers (S/Ns) 10003 through 10230 inclusive; and Model CL–600–2D15 (Regional Jet Series 705) airplanes; and Model CL–600–2D24 (Regional Jet Series 900) airplanes having S/Ns 15001 through 15053 inclusive, 15055, and 15056; certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 32: Landing gear.

(e) Reason

This AD was prompted by further analysis of the main landing gear (MLG) door by the manufacturer. We are issuing this AD to prevent failure of the lower panel of the MLG door, departure of the lower panel from the airplane, and consequent damage to airplane structure, which could adversely affect the airplane's continued safe flight and landing.

(f) Compliance

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

(g) Restatement of Requirements of AD 2003–19–51, Amendment 39–13353 (68 FR 61615, October 29, 2003), With Revised Serial Numbers and Service Information: Initial Compliance Time

For Model CL–600–2C10 (Regional Jet series 700 & 701) series airplanes, S/Ns 10003 through 10230 inclusive; and Model CL–600–2D24 (Regional Jet series 900) series airplanes, S/Ns 15002 through 15053 inclusive, 15055, and 15056: Perform the initial inspection specified in paragraph (h) of this AD at the applicable time specified in paragraph (g)(1) or (g)(2) of this AD.

(1) For airplanes with fewer than 1,500 total flight cycles as of November 3, 2003 (the effective date of AD 2003–19–51, Amendment 39–13353 (68 FR 61615, October 29, 2003)): Do the inspections before the accumulation of 1,050 total flight cycles, or within 50 flight cycles after August 15, 2006 (the effective date of AD 2006–14–05, Amendment 39–14676 (71 FR 38979, July 11, 2006)), whichever is later.

(2) For airplanes with 1,500 or more total flight cycles as of November 3, 2003: Do the inspections within 10 flight cycles after August 15, 2006.

(h) Restatement of Requirements of AD 2003–19–51, Amendment 39–13353 (68 FR 61615, October 29, 2003), With Revised Serial Numbers and Service Information: Inspections

For Model CL–600–2C10 (Regional Jet series 700 & 701) series airplanes, S/Ns 10003 through 10230 inclusive; and Model CL–600–2D24 (Regional Jet series 900) series airplanes, S/Ns 15002 through 15053 inclusive, 15055 and 15056: At the applicable time specified in paragraph (g) of this AD, perform detailed inspections of the lower panel, part number (P/N) CC670–10520, of the left- and right-hand MLG doors for the conditions and in the areas specified in paragraphs (h)(1), (h)(2), (h)(3), and (h)(4) of this AD; and Figures 1, 2, and 3 of this AD. For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) Inspect the cross member, P/N CC670–10572, of the MLG door lower panel for cracking or deformation, in accordance with Figure 2 of this AD.

(2) Inspect the inner skin, P/N CC670–10577, of the MLG door lower panel at the cross member (P/N CC670–10572) for cracking or deformation, or pulled or missing fasteners, in accordance with Figure 2 of this AD.

(3) Inspect the outer skin, P/N CC670–10574, of the MLG door lower panel at the cross member (P/N CC670–10572) for cracking or deformation, or pulled or missing fasteners, in accordance with Figure 2 of this AD.

(4) Inspect the forward member, P/N CC670–10570, and aft member, P/N CC670–10571, of the MLG door lower panel for cracking or deformation, or pulled or missing fasteners, in accordance with Figure 3 of this AD. Figures 1 through 3 of this AD follow.

BILLING CODE 4910–13–P

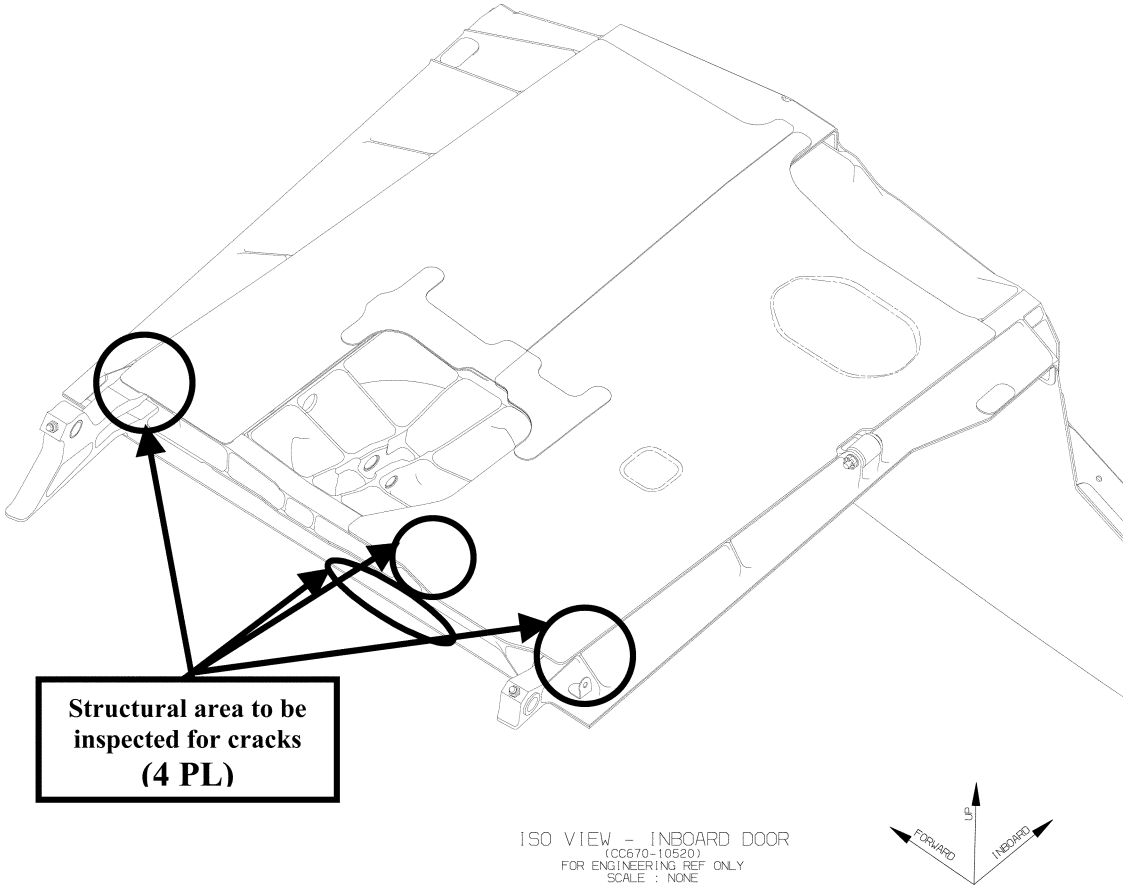

Figure 1
LH side shown
RH side opposite

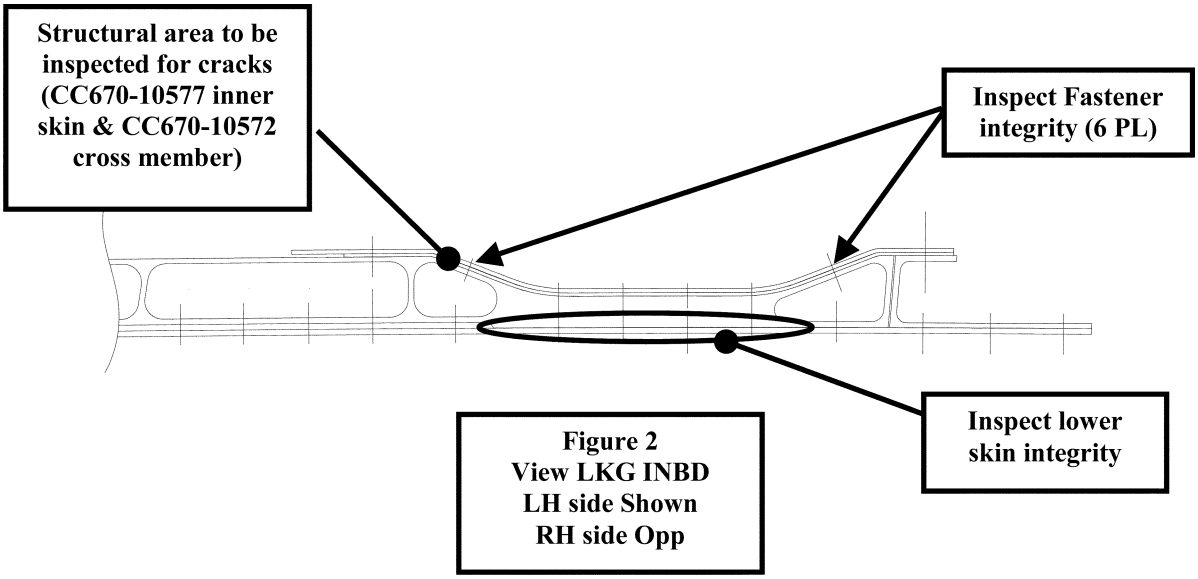

Figure 2
View LKG INBD
LH side Shown
RH side Opp

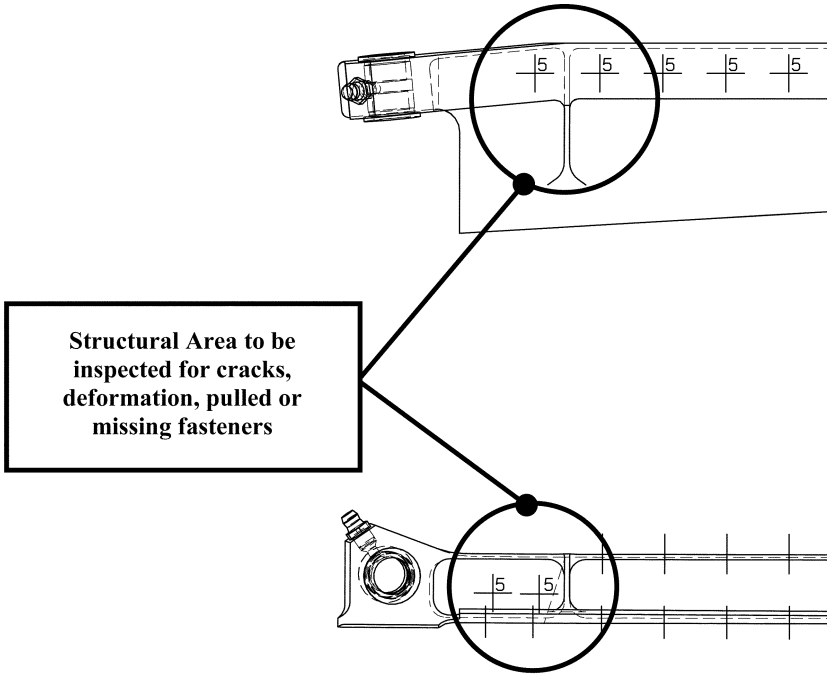

Figure 3
View LKG INBD
LH side Shown
RH side Opp

BILLING CODE 4910–13–C

(i) Restatement of Requirements of AD 2003–19–51, Amendment 39–13353 (68 FR 61615, October 29, 2003), With Revised Serial Numbers and Service Information: Repetitive Inspections

If no cracking or deformation, or pulled or missing fastener, as applicable, is found during any inspection required by paragraph (h) or (i) of this AD, repeat the inspections thereafter at intervals not to exceed 100 flight cycles.

(j) Restatement of Requirements of AD 2003–19–51, Amendment 39–13353 (68 FR 61615, October 29, 2003), With Revised Serial Numbers and Service Information: Corrective Actions

If any cracking or deformation, or pulled or missing fastener, as applicable, is found during any inspection done in accordance with paragraph (h) or (i) of this AD: Before further flight, accomplish paragraph (j)(1), (j)(2), or (j)(3) of this AD.

(1) Repair the damage in accordance with a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent); and accomplish repetitive inspections in accordance with a method and at a repetitive interval approved by same.

(2) Replace the lower panel assembly, P/N CC670–10520, of the affected MLG door with a new or serviceable lower panel assembly having the same P/N, according to a method approved by either the Manager, New York ACO, FAA; or TCCA (or its delegated agent). Repeat the inspections specified in paragraph (h) of this AD at intervals not to exceed 100 flight cycles.

Note 1 to paragraph (j)(2) of this AD: Guidance on replacing the lower panel assembly can be found in Task Cards 32–12–01–000–801–A01 and 32–12–01–400–801–A01 of the Bombardier CRJ 700/900 Series Regional Jet Aircraft Maintenance Manual.

(3) Remove the lower panel assembly, P/N CC670–10520, of the affected MLG door, and accomplish paragraph (j)(3)(i) or (j)(3)(ii) of this AD, as applicable.

(i) For Model CL600–2C10 (Regional Jet series 700 & 701) series airplanes: Revise the Configuration Deviation List (CDL), Appendix 1, of the airplane flight manual (AFM), to include the following limitations. This may be accomplished by inserting a copy of this AD into the CDL of the AFM.

For Model CL600–2C10 series airplanes: If one or both door panel assemblies, part number CC670–10520, is missing:

(1) Take-off Weight is reduced by 202.5 kg/door, or 450 lb/door.

(2) Enroute Climb Weight is reduced by 445.5 kg/door, or 990 lb/door.

(3) Landing Weight is reduced by 202.5 kg/door, or 450 lb/door.

(4) Fuel Consumption is increased by +3.42% on fuel used/door.

(5) Cruise Airspeed is limited to not more than 0.78 Mach.

(ii) For Model CL–600–2D24 (Regional Jet series 900) series airplanes: Revise the CDL, Appendix 1, of the AFM, to include the following limitations. This may be accomplished by inserting a copy of this AD into the CDL of the AFM.

For Model CL600–2D24 series airplanes: If one or both door panel assemblies, part number CC670–10520, is missing:

(1) Take-off Weight is reduced by 245 kg/door, or 540 lb/door.

(2) Enroute Climb Weight is reduced by 551 kg/door, or 1,215 lb/door.

(3) Landing Weight is reduced by 245 kg/door, or 540 lb/door.

(4) Fuel Consumption is increased by +3.42% on fuel used/door.

(5) Cruise Airspeed is limited to not more than 0.78 Mach.

(k) Restatement of Requirements of AD 2006–14–05, Amendment 39–14676 (71 FR 38979, July 11, 2006), With Revised Service Information: Inboard MLG Door Inspections

For all airplanes on which an inspection has not been done in accordance with paragraph (h) of this AD on or before August 15, 2006: At the applicable time specified in paragraph (k)(1) or (k)(2) of this AD, do the inspections of the left- and right-hand inboard MLG doors for damage, in accordance with Part A of the Accomplishment Instructions of Bombardier

Alert Service Bulletin A670BA–32–016, Revision A, dated June 7, 2005, excluding Appendix A, dated June 2, 2005, and including Appendix B, dated June 2, 2005; or Bombardier Alert Service Bulletin A670BA–32–016, Revision F, dated May 14, 2010, excluding Appendix A, dated June 2, 2005, and including Appendix B, dated June 2, 2005. Doing the inspections required by this paragraph terminates the actions required by paragraphs (g) through (j) of this AD. As of the effective date of this AD, use only Bombardier Alert Service Bulletin A670BA–32–016, Revision F, dated May 14, 2010, excluding Appendix A, dated June 2, 2005, and including Appendix B, dated June 2, 2005.

(1) For airplanes that have accumulated fewer than 1,500 total flight cycles as of August 15, 2006: Before the accumulation of 1,000 total flight cycles, or within 50 flight cycles after August 15, 2006, whichever occurs later.

(2) For airplanes that have accumulated 1,500 flight cycles or more as of August 15, 2006: Within 10 flight cycles after August 15, 2006.

(l) Restatement of Requirements of AD 2006–14–05, Amendment 39–14676 (71 FR 38979, July 11, 2006), With Revised Service Information: Inboard MLG Door Inspections

For airplanes on which an inspection has been done in accordance with paragraph (h) of this AD on or before August 15, 2006: At the applicable time specified in paragraph (l)(1) or (l)(2) of this AD, inspect installed door(s) as specified in paragraph (k) of this AD. Doing the inspections required by this paragraph terminates the actions required by paragraphs (g) through (j) of this AD.

(1) For airplanes that are not subject to an approved alternative method of compliance (AMOC) that extends the inspection interval to 450 flight cycles: Within 100 flight cycles since the last inspection done in accordance with paragraph (h) of this AD.

(2) For airplanes that are subject to an approved AMOC that extends the inspection interval to 450 flight cycles: At the earlier of the times specified in paragraphs (l)(2)(i) and (l)(2)(ii) of this AD:

(i) Within 450 flight cycles since the last inspection done in accordance with paragraph (h) of this AD.

(ii) Within 100 flight cycles since the last inspection done in accordance with paragraph (h) of this AD, or within 50 cycles after August 15, 2006, whichever occurs later.

(m) Restatement of Requirements of AD 2006–14–05, Amendment 39–14676 (71 FR 38979, July 11, 2006), With Revised Service Information: Repetitive Inspections

If no damage is found during any inspection done in accordance with paragraph (k) of this AD, repeat the inspections specified in paragraph (k) of this AD thereafter at intervals not to exceed 100 flight cycles.

(n) Restatement of Requirements of AD 2006–14–05, Amendment 39–14676 (71 FR 38979, July 11, 2006), With Revised Service Information: Corrective Action—Replace or Remove MLG Door

If any damage is found during any inspection done in accordance with paragraph (k) of this AD, before further flight, do the actions in paragraph (n)(1) or (n)(2) of this AD. Repeat the inspections specified in paragraph (k) of this AD thereafter at intervals not to exceed 100 flight cycles.

(1) Replace the inboard MLG door with a new or repaired door in accordance with Part B of the Accomplishment Instructions of the Bombardier Alert Service Bulletin A670BA–32–016, Revision A, dated June 7, 2005, excluding Appendix A, dated June 2, 2005, and including Appendix B, dated June 2, 2005; or Bombardier Alert Service Bulletin A670BA–32–016, Revision F, dated May 14, 2010, excluding Appendix A, dated June 2, 2005, and including Appendix B, dated June 2, 2005; except where those service bulletins specify to contact the manufacturer for repair if no generic repair engineering order (REO) is available, before further flight, repair using a method approved by either the Manager, New York ACO, FAA; or TCCA (or its delegated agent). As of the effective date of this AD, use only Bombardier Alert Service Bulletin A670BA–32–016, Revision F, dated May 14, 2010, excluding Appendix A, dated June 2, 2005, and including Appendix B, dated June 2, 2005.

(2) Remove the inboard MLG door in accordance with Part B of the Accomplishment Instructions of the Bombardier Alert Service Bulletin A670BA–32–016, Revision A, dated June 7, 2005, excluding Appendix A, dated June 2, 2005, and including Appendix B, dated June 2, 2005; or Bombardier Alert Service Bulletin A670BA–32–016, Revision F, dated May 14, 2010, excluding Appendix A, dated June 2, 2005, and including Appendix B, dated June 2, 2005; and accomplish paragraph (n)(2)(i) or (n)(2)(ii) of this AD, as applicable. As of the effective date of this AD, use only Bombardier Alert Service Bulletin A670BA–32–016, Revision F, dated May 14, 2010, excluding Appendix A, dated June 2, 2005, and including Appendix B, dated June 2, 2005.

(i) For Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes and Model CL–600–2D15 (Regional Jet Series 705) airplanes: Revise the Configuration Deviation List (CDL), Appendix 1, of the Bombardier Canadair Regional Jet AFM, to include the following limitations. This may be accomplished by inserting a copy of this AD into the CDL of the AFM. Remove any existing CDL limitation required by paragraph (j)(3)(i) of this AD from the AFM.

For Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes and Model CL–600–2D15 (Regional Jet Series 705) airplanes: If one or both door panel assemblies, part number CC670–10520, is missing:

(1) Take-off Weight is reduced by 202.5 kg/door, or 450 lb/door.

(2) Enroute Climb Weight is reduced by 445.5 kg/door, or 990 lb/door.

(3) Landing Weight is reduced by 202.5 kg/door, or 450 lb/door.

(4) Fuel Consumption is increased by +2.5% on fuel used/door.

(5) Cruise Airspeed is limited to not more than 0.78 Mach.

(6) The climb ceiling obtained from the Flight Planning and Cruise Control Manual (FPCCM) must be reduced by 1,000 ft/door.

Note 2 to paragraph (n)(2)(i) of this AD: When a statement with the information specified in paragraph (n)(2)(i) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

(ii) For Model CL–600–2D24 (Regional Jet Series 900) airplanes: Revise the CDL, Appendix 1, of the Bombardier Canadair Regional Jet AFM, to include the following limitations. This may be accomplished by inserting a copy of this AD into the CDL of the AFM. Remove any existing CDL limitation required by paragraph (j)(3)(ii) of this AD from the AFM.

For Model CL–600–2D24 (Regional Jet Series 900) airplanes: If one or both door panel assemblies, part number CC670–10520, is missing:

(1) Take-off Weight is reduced by 245 kg/door, or 540 lb/door.

(2) Enroute Climb Weight is reduced by 551 kg/door, or 1,215 lb/door.

(3) Landing Weight is reduced by 245 kg/door, or 540 lb/door.

(4) Fuel Consumption is increased by +2.5% on fuel used/door.

(5) Cruise Airspeed is limited to not more than 0.78 Mach.

(6) The climb ceiling obtained from the Flight Planning and Cruise Control Manual (FPCCM) must be reduced by 1,000 ft/door.

Note 3 to paragraph (n)(2)(ii) of this AD: When a statement with the information specified in paragraph (n)(2)(ii) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

(o) Restatement of Requirements of AD 2006–14–05, Amendment 39–14676 (71 FR 38979, July 11, 2006), With Revised Service Information: Revise CDL

For airplanes on which the door(s) have been removed in accordance with paragraph (j)(3) of this AD: Within 30 days after August 15, 2006, do the revision specified in paragraph (n)(2)(i) or (n)(2)(ii) of this AD, as applicable, and remove any revision required by paragraph (j)(3)(i) or (j)(3)(ii) of this AD.

(p) Restatement of Requirements of AD 2006–14–05, Amendment 39–14676 (71 FR 38979, July 11, 2006), With Revised Service Information: No Reporting Required

Although Bombardier Alert Service Bulletin A670BA–32–016, Revision A, dated June 7, 2005, excluding Appendix A, dated June 2, 2005, and including Appendix B, dated June 2, 2005; and Bombardier Alert Service Bulletin A670BA–32–016, Revision F, dated May 14, 2010, excluding Appendix A, dated June 2, 2005, and including Appendix B, dated June 2, 2005; specify to submit certain information to the manufacturer, this AD does not include that requirement.

(q) Restatement of Requirements of AD 2006–14–05, Amendment 39–14676 (71 FR 38979, July 11, 2006), With Revised Service Information: Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs of (g) through (q) of this AD, if those actions were performed before August 15, 2006 (the effective date of AD 2006–14–05, Amendment 39–14767 (71 FR 38979, July 11, 2006), using Bombardier Alert Service Bulletin A670BA–32–016, dated June 2, 2005.

(r) New Requirements of This AD: Terminating Modification for MLG Door Configuration

Within 6,000 flight hours after the effective date of this AD, modify the MLG door, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–017, Revision C, dated May 14, 2010. Doing this modification terminates the requirements of this AD.

(s) New Requirements of This AD: Credit for Previous Actions

This paragraph provides credit for the modification of the MLG door required by paragraph (r) of this AD, if the modification was performed before the effective date of this AD using Bombardier Service Bulletin 670BA–32–017, dated July 24, 2006; Revision A, dated September 26, 2006; or Revision B, dated July 31, 2008; as applicable.

(t) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD. AMOCs approved previously in accordance with AD 2006–14–05, Amendment 39–14676 (71 FR 38979, July 11, 2006), are acceptable for compliance with this AD.

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

(u) Related Information

Refer to MCAI TCCA Airworthiness Directive CF–2003–23R3, dated May 21, 2010, and the following service information for related information:

(1) Bombardier Alert Service Bulletin A670BA–32–016, Revision F, dated May 14, 2010, excluding Appendix A, dated June 2, 2005, and including Appendix B, dated June 2, 2005.

(2) Bombardier Service Bulletin 670BA–32–017, Revision C, dated May 14, 2010.

(v) Material Incorporated by Reference

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

(i) Bombardier Service Bulletin 670BA–32–017, Revision C, dated May 14, 2010.

(ii) Bombardier Alert Service Bulletin A670BA–32–016, Revision F, dated May 14, 2010, excluding Appendix A, dated June 2, 2005, and including Appendix B, dated June 2, 2005.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com*.

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

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

Issued in Renton, Washington, on January 27, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–4449 Filed 2–28–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0912; Directorate Identifier 2011–NM–035–AD; Amendment 39–16962; AD 2012–04–06]

RIN 2120–AA64

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

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all 328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–100 airplanes. This proposed AD was prompted by several runway excursion incidents and a single accident where the power lever could not be operated as intended during the landing roll-out on Model Dornier 328–100 airplanes. This proposed AD would require a modification of the engine control box assembly. We are proposing this AD to prevent runway excursion, which could result in damage to the airplane and injury to the occupants.

DATES: This AD becomes effective April 4, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 4, 2012.

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

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1503; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 31, 2011 (76 FR 54145). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Several runway excursion incidents and a single accident have occurred in the past with Dornier 328–100 aeroplanes, where the power lever could not be operated as intended during the landing roll-out. * * *
>
> Recurrence of such an event under similar conditions, if not corrected, could result in further cases of runway excursion, possibly resulting in damage to the aeroplane and injury to the occupants.
>
> A modification to the power lever control box [i.e., engine control box assembly] has been designed to prevent further power lever handling difficulties.
>
> For the reasons described above, this [EASA] AD requires a modification of the power lever control box as a retrofit for the entire fleet of 328–100 aeroplanes.

The required actions also include revising the airplane flight manual

(AFM) to include Dornier 328–100 Temporary Revisions (TR) 04–078, 04–079, and 04–080, all dated March 15, 2010, to the Abnormal Procedures section of the Dornier (328 Support Services) 328–100 AFM; and Dornier 328–100 TRs 05–064, 05–065, and 05–066, all dated February 13, 2009, to the Normal Procedures section of the Dornier (328 Support Services) 328–100 AFM. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Request To Change Work Hours

328 Support Services GmbH requested we revise the Cost of Compliance section of the NPRM (76 FR 54145, August 31, 2011). The commenter stated that the estimate of 79 work-hours specified in the NPRM is too low and should be changed to 99 work-hours as specified in 328 Support Services Service Bulletin SB–328–76–486, Revision 3, dated April 7, 2010.

We agree that the number of work hours required is higher than our previous estimate. The cost impact information in this AD has been revised to indicate this higher amount.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

Although the MCAI specifies doing an inspection for discrepancies, 328 Support Services Service Bulletin SB–328–76–486, Revision 3, dated April 7, 2010, does not include this action. The off-wing inspection included in the MCAI is not required to address the unsafe condition. The modification addresses the identified unsafe condition. Therefore, this AD does not include that requirement.

Although the MCAI and service information do not include revising the AFM, this AD includes that requirement. The TRs specified below introduce pre-flight operational tests of the warning system modification, along with abnormal procedures that provide guidance to the flightcrew in the event of various potential warning system faults. These procedures must be adopted at the same time the modification is installed to ensure proper use and operation of the power lever warning system. This has been coordinated with EASA.

- Dornier 320–100 TR 04–078, dated March 15, 2010, for the nuisance power lever aural alert.
- Dornier 328–100 TR 04–079 and 04–080, both dated March 15, 2010, for the engine indication and crew alerting system (EICAS) caution ''Proxi System.''
- Dornier 328–100 TRs 05–064, 05–065, and 05–066, all dated February 13, 2009, for the power level aural alert test.

Costs of Compliance

We estimate that this AD will affect 20 products of U.S. registry. We also estimate that it will take about 99 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $35,700 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $882,300, or $44,115 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 54145, August 31, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–04–06 328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH): Amendment 39–16962. Docket No. FAA–2011–0912; Directorate Identifier 2011–NM–035–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 4, 2012.

(b) Affected ADs

None.

(c) Applicability

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

(d) Subject

Air Transport Association (ATA) of America Code 76: Engine Controls.

(e) Reason

This AD was prompted by several runway excursion incidents and a single accident where the power lever could not be operated as intended during the landing roll-out on Model Dornier 328–100 airplanes. We are issuing this AD to prevent runway excursion, which could result in damage to the airplane and injury to the occupants.

(f) Compliance

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

(g) Modification

Within 15 months after the effective date of this AD, modify the engine control box assembly with additional aural alerting function and a revised power lever guiding gate, in accordance with the Accomplishment Instructions of 328 Support Services Service Bulletin SB–328–76–486, Revision 3, dated April 7, 2010.

(h) Credit for Previous Actions

This paragraph provides credit for the modification required by paragraph (g) of this AD, if the modification was performed before the effective date of this AD using 328 Support Services Service Bulletin SB–328–76–486, dated July 15, 2009; Revision 1, dated March 2, 2010; or Revision 2, dated March 11, 2010.

(i) Airplane Flight Manual Revisions

Concurrently with doing the modification required in paragraph (g) of this AD, revise the Dornier (328 Support Services) 328–100 Airplane Flight Manual (AFM) to include the information in the Dornier 328–100 temporary revisions (TRs) identified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD. Operate the airplane according to the procedures in those TRs.

(1) For the power lever aural alert test:

(i) Dornier 328–100 TR 05–064, dated February 13, 2009, to the Normal Procedures section of the Dornier (328 Support Services) 328–100 AFM.

(ii) Dornier 328–100 TR 05–065, dated February 13, 2009, to the Normal Procedures section of the Dornier (328 Support Services) 328–100 AFM.

(iii) Dornier 328–100 TR 05–066, dated February 13, 2009, to the Normal Procedures section of the Dornier (328 Support Services) 328–100 AFM.

(2) For the nuisance power lever aural alert: Dornier 328–100 TR 4–078, dated March 15, 2010, to the Abnormal Procedures section of the Dornier (328 Support Services) 328–100 ATM.

(3) For the engine indication and crew alerting system (EICAS) caution ''Proxi System:''

(i) Dornier 328–100 TR 04–079, dated March 15, 2010, to the Abnormal Procedures section of the Dornier (328 Support Services) 328–100 ATM.

(ii) Dornier 328–100 TR 04–080, dated March 15, 2010, to the Abnormal Procedures section of the Dornier (328 Support Services) 328–100 ATM.

Note 1 to paragraph (i) of this AD: Revising the AFM may be done by inserting copies of the TRs specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD, in the Dornier (328 Support Services) 328–100 AFM. When these TRs have been included in general revisions of this AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision of this AFM is identical to that in the TRs specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD, and these TRs may be removed.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Groves, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1503; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(k) Related Information

Refer to MCAI EASA Airworthiness Directive 2009–0196, dated September 4, 2009; 328 Support Services Service Bulletin SB–328–76–486, Revision 3, dated April 7, 2010; and the TRs specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD; for related information.

(l) Material Incorporated by Reference

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

(i) 328 Support Services Service Bulletin SB–328–76–486, Revision 3, dated April 7, 2010. The revision level and date of this document are shown only on the odd-numbered pages of the document.

(ii) Dornier 328–100 Temporary Revision 04–078, dated March 15, 2010, to the Abnormal Procedures section of the Dornier (328 Support Services) 328–100 Airplane Flight Manual.

(iii) Dornier 328–100 Temporary Revision 04–079, dated March 15, 2010, to the Abnormal Procedures section of the Dornier (328 Support Services) 328–100 Airplane Flight Manual.

(iv) Dornier 328–100 Temporary Revision 04–080, dated March 15, 2010, to the Abnormal Procedures section of the Dornier (328 Support Services) 328–100 Airplane Flight Manual.

(v) Dornier 328–100 Temporary Revision 05–064, dated February 13, 2009, to the Normal Procedures section of the Dornier (328 Support Services) 328–100 Airplane Flight Manual.

(vi) Dornier 328–100 Temporary Revision 05–065, dated February 13, 2009, to the Normal Procedures section of the Dornier (328 Support Services) 328–100 Airplane Flight Manual.

(vii) Dornier 328–100 Temporary Revision 05–066, dated February 13, 2009, to the Normal Procedures section of the Dornier (328 Support Services) 328–100 Airplane Flight Manual.

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

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

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

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–4362 Filed 2–28–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1311; Directorate Identifier 2009–NM–229–AD; Amendment 39–16938; AD 2012–02–15]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for certain Model 757–200, –200PF, –200CB, and –300 series airplanes. That AD currently requires inspecting certain power feeder wire bundles for damage, inspecting the support clamps for these wire bundles to determine whether the clamps are properly installed, and performing corrective actions if necessary. This new AD requires additional inspections for certain airplanes. This AD was prompted by a report that a power feeder wire bundle chafed against the number six auxiliary slat track, causing electrical wires in the bundle to arc, which damaged both the auxiliary slat track and power feeder wires. We are issuing this AD to prevent arcing that could be a possible ignition source for leaked flammable fluids, which could result in a fire. Arcing could also result in a loss of power from the generator connected to the power feeder wire bundle, and consequent loss of systems, which could reduce controllability of the airplane.

DATES: This AD is effective April 4, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of April 4, 2012.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Marie Hogestad, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6418; fax: 425–917–6590; email: *marie.hogestad@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2007–03–01, amendment 39–14912 (72 FR 3939, January 29, 2007). That AD applies to the specified products. The NPRM was published in the **Federal Register** on January 18, 2011 (76 FR 2848). That NPRM proposed to continue to require inspecting certain power feeder wire bundles for damage, inspecting the support clamps for those wire bundles to determine whether the clamps are properly installed, and performing corrective actions if necessary. That NPRM also proposed to require additional inspections for certain airplanes.

Comments

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

Requests To Correct Figure Reference in Paragraph (i) of the NPRM (76 FR 2848, January 18, 2011)

United Airlines and American Airlines requested that paragraph (i) of the NPRM (76 FR 2848, January 18, 2011) be changed to reference Figure 1 rather than Figure 3 of Boeing Special Attention Service Bulletin 757–24–0105, Revision 5, dated July 30, 2009. Boeing Special Attention Service Bulletin 757–24–0105, Revision 5, dated July 30, 2009, has a typographical error referencing the incorrect figure. United Airlines also requested that the NPRM refer to Boeing Information Notice 757–24–0105 IN 03, dated August 19, 2009. United Airlines stated that Boeing Information Notice 757–24–0105 IN 03, dated August 19, 2009, was issued to notify operators of this error.

We agree to revise paragraph (i) of this AD to refer to Figure 1 of Boeing Special Attention Service Bulletin 757–24–0105, Revision 5, dated July 30, 2009. We have confirmed that the correct figure is Figure 1; therefore, we have revised paragraph (i) of this AD to refer to Figure 1 of Boeing Special Attention Service Bulletin 757–24–0105, Revision 5, dated July 30, 2009. We have not revised paragraph (i) of this AD to refer to Boeing Information Notice 757–24–0105 IN 03, dated August 19, 2009, because we revised that paragraph to refer to the correct figure.

Request To Add Inspection To Determine Airplane Configuration

American Airlines requested that the NPRM (76 FR 2848, January 18, 2011) be revised to include an inspection to determine if the airplane has one or two attach brackets on the left wing prior to accomplishing the required rework. American Airlines stated that Group 2 airplanes were moved to Group 1 in Boeing Special Attention Service Bulletin 757–24–0105, Revision 5, dated July 30, 2009, because some airplanes have two attach brackets on the left wing, similar to earlier Group 1 airplanes identified in previous revisions of that service bulletin. American Airlines stated that the NPRM does not contain a step to determine the airplane configuration before the rework.

We disagree with adding an inspection to determine the airplane configuration; however, we agree to clarify paragraph (i) of this AD. Therefore, we have revised paragraph (i) of this AD to specify the affected airplanes on which the actions are required by that paragraph.

Request To Clarify Affected Airplanes in Paragraph (i) of the NPRM (76 FR 2848, January 18, 2011)

United Airlines requested that a statement be added to clarify that the new requirement specified in paragraph (i) of the NPRM (76 FR 2848, January 18, 2011) is only applicable to airplanes with upper and lower brackets installed in the left wing (Group 1, Configuration 1 airplanes), as defined in Boeing Special Attention Service Bulletin 757–24–0105, Revision 5, dated July 30, 2009. United Airlines stated that the NPRM is unclear regarding which

airplanes are affected by the new requirements.

We agree that clarification is needed. Airplanes in Group 1, as specified in Boeing Special Attention Service Bulletin 757–24–0105, Revision 5, dated July 30, 2009, could be in the configuration shown in Figure 1 (Configuration 1 with two attach brackets on the left wing) or Figure 3 (Configuration 2 with one attach bracket on the left wing). Therefore, as stated previously, we have clarified paragraph (i) of this AD to specify the affected airplanes.

Request To Provide Credit for Previous Work Done Using Boeing Special Attention Service Bulletin 757–24–0105, Revision 5, Dated July 30, 2009

European Air Transport, a company of DHL, requested that we revise the NPRM (76 FR 2848, January 18, 2011) to provide credit to operators that have accomplished inspections and corrective actions prior to the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 757–24–0105, Revision 5, dated July 30, 2009. European Air Transport pointed out that the NPRM provides credit for actions accomplished using previous revisions of Boeing Special Attention Service Bulletin 757–24–0106, which is applicable to Model 757–300 airplanes.

We agree that inspections and corrective actions done before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 757–24–0105, Revision 5, dated July 30, 2009, are acceptable for accomplishing the applicable actions specified in this AD. However, operators may always accomplish the actions in an AD using the required service information at any time before the effective date of the AD, as allowed by the phrase ''unless the actions have already been done.'' Therefore, because these actions are not required to be repeated, it is unnecessary to provide specific credit for these actions. We have made no change to the AD in this regard.

Additional Changes to Final Rule

We have revised the headings of Tables 1, 2, 3, 4, and 5 of this AD to clarify the purpose of the content in those tables.

We have included headings for paragraphs (i) and (j) of this AD to clarify the purpose of the content in those paragraphs.

Boeing Special Attention Service Bulletin 757–24–0105, Revision 3, dated October 3, 2006; and Revision 4, dated January 4, 2008; have been added to Table 5, ''Previous Service Information for Paragraph (g) of this AD,'' of this AD.

We have also revised the headings for and wording in paragraphs (h) and (k) of this AD; these changes have not changed the intent of these paragraphs.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (76 FR 2848, January 18, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 2848, January 18, 2011).

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

Costs of Compliance

We estimate that this AD affects 683 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection (required by AD 2007–03–01, Amendment 39–14912 (72 FR 3939, January 29, 2007)).	2	$85	$0	$170 per inspection cycle ...	683	$116,110 per inspection cycle.
Inspection for certain Group 1 Model 757–200, –200CB, –200PF series airplanes (new action).	5	85	0	$425 per inspection cycle ...	646	$274,550 per inspection cycle.
Inspections for Model 757–300 series airplanes (new action).	4	85	0	$340 per inspection cycle ...	37	$12,580 per inspection cycle.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2007–03–01, Amendment 39–14912 (72 FR 3939, January 29, 2007), and adding the following new AD:

2012–02–15 The Boeing Company: Amendment 39–16938; Docket No. FAA–2010–1311; Directorate Identifier 2009–NM–229–AD.

(a) Effective Date

This airworthiness directive (AD) is effective April 4, 2012.

(b) Affected ADs

This AD supersedes AD 2007–03–01, Amendment 39–14912 (72 FR 3939, January 29, 2007).

(c) Applicability

This AD applies to The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category, specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model 757–200, –200PF, and –200CB series airplanes, as identified in Boeing Special Attention Service Bulletin 757–24–0105, Revision 5, dated July 30, 2009.

(2) Model 757–300 series airplanes, as identified in Boeing Special Attention Service Bulletin 757–24–0106, Revision 5, dated July 30, 2009.

(d) Subject

Air Transport Association (ATA) of America Code 24: Electrical power.

(e) Unsafe Condition

This AD results from a report that a power feeder wire bundle chafed against the number six auxiliary slat track, causing electrical wires in the bundle to arc, which damaged both the auxiliary slat track and power feeder wires. The Federal Aviation Administration is issuing this AD to prevent arcing that could be a possible ignition source for leaked flammable fluids, which could result in a fire. Arcing could also result in a loss of power from the generator connected to the power feeder wire bundle, and consequent loss of systems, which could reduce controllability of the airplane.

(f) Compliance

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

(g) Restatement of Requirements of AD 2007–03–01, Amendment 39–14912 (72 FR 3939, January 29, 2007), With Revised Service Information and Affected Airplane Groups: One-Time Inspections and Corrective Actions

For Model 757–200, –200PF, and –200CB series airplanes identified in Boeing Special Attention Service Bulletin 757–24–0105, Revision 5, dated July 30, 2009; and for Model 757–300 series airplanes identified as Group 1 airplanes in Boeing Special Attention Service Bulletin 757–24–0106, Revision 5, dated July 30, 2009: Within 24 months after March 5, 2007 (the effective date for AD 2007–03–01, Amendment 39–14912 (72 FR 3939, January 29, 2007)), perform a general visual inspection for damage (including but not limited to chafing) of power feeder wire bundles W3312 and W3412 at front spar station 148.90 in the left and right wings, and a general visual inspection of the support clamps for those power feeder wire bundles to determine whether the clamps are properly installed, and, before further flight, do all applicable corrective actions. Do these actions by doing all of the applicable actions in accordance with the Accomplishment Instructions of the applicable service bulletin identified in Table 1 of this AD. After the effective date of this AD, only Boeing Special Attention Service Bulletin 757–24–0105, Revision 5, dated July 30, 2009 (for Model 757–200, –200CB, and –200PF series airplanes); or Boeing Special Attention Service Bulletin 757–24–0106, Revision 5, dated July 30, 2009 (for Model 757–300 series airplanes); may be used.

TABLE 1—ACCEPTABLE SERVICE INFORMATION FOR PARAGRAPH (G) OF THIS AD

Model—	Boeing Special Attention Service Bulletin—	Revision—	Dated—
757–200, –200CB, and –200PF series airplanes	757–24–0105	2	April 20, 2006.
757–200, –200CB, and –200PF series airplanes	757–24–0105	5	July 30, 2009.
757–300 series airplanes	757–24–0106	2	April 20, 2006.
757–300 series airplanes	757–24–0106	5	July 30, 2009.

(h) Restatement of Requirements of AD 2007–03–01, Amendment 39–14912 (72 FR 3939, January 29, 2007): Credit for Previous Actions

This paragraph provides credit for inspections and corrective actions, as required by paragraph (g) of this AD, if those actions were performed before March 5, 2007 (the effective date for AD 2007–03–01, Amendment 39–14912 (72 FR 3939, January 29, 2007)), using the service information listed in Table 2 of this AD.

TABLE 2—OTHER ACCEPTABLE SERVICE INFORMATION FOR PREVIOUSLY ACCOMPLISHED ACTIONS IN PARAGRAPH (G) OF THIS AD

Boeing Special Attention Service Bulletin—	Revision—	Dated—
757–24–0105		September 30, 2004.
757–24–0105	1	June 23, 2005.
757–24–0106		September 30, 2004.
757–24–0106	1	June 23, 2005.

(i) New Requirements of This AD: Additional Work for Model 757–200, –200CB, and –200PF Series Airplanes Identified in Boeing Special Attention Service Bulletin 757–24–0105, Revision 5, Dated July 30, 2009

For Model 757–200, –200CB, and –200PF series airplanes identified as Group 1, Configuration 1 airplanes, in Boeing Special Attention Service Bulletin 757–24–0105, Revision 5, dated July 30, 2009, on which inspections have been done before the effective date of this AD in accordance with any service bulletin specified in Table 3 of this AD: Within 24 months after the effective date of this AD, do a general visual inspection to determine if the clamp is installed on the lower bracket on the left wing, in accordance with Figure 1 of Boeing Special Attention Service Bulletin 757–24–0105, Revision 5, dated July 30, 2009. If the clamp is missing, before further flight, install a clamp on the lower bracket on the left wing, in accordance with Figure 1 of Boeing Special Attention Service Bulletin 757–24–0105, Revision 5, dated July 30, 2009.

TABLE 3—SERVICE INFORMATION FOR PREVIOUSLY ACCOMPLISHED ACTIONS FOR MODEL 757–200, –200CB, AND –200PF SERIES AIRPLANES

Boeing Special Attention Service Bulletin—	Revision—	Dated—
757–24–0105		September 30, 2004.
757–24–0105	1	June 23, 2005.
757–24–0105	2	April 20, 2006.
757–24–0105	3	October 3, 2006.
757–24–0105	4	January 4, 2008.

(j) New Requirements of This AD: Additional Work for Model 757–300 Series Airplanes Identified in Boeing Special Attention Service Bulletin 757–24–0106, Revision 5, Dated July 30, 2009

For Model 757–300 series airplanes in Group 2, as identified in Boeing Special Attention Service Bulletin 757–24–0106, Revision 5, dated July 30, 2009: Within 24 months after the effective date of this AD, perform a general visual inspection for damage (including, but not limited to chafing) of power feeder wire bundles W5784 and W5786 at front spar station 148.90 in the left and right wings, and a general visual inspection of the support clamps for those power feeder wire bundles to determine if the clamps are properly installed, and, before further flight, do all applicable corrective actions. Do all applicable actions in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–24–0106, Revision 5, dated July 30, 2009.

(k) New Requirements of This AD: Credit for Previous Actions

(1) This paragraph provides credit for inspections and corrective actions, as required by paragraph (j) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 757–24–0106, Revision 4, dated January 4, 2008.

(2) This paragraph provides credit for inspections and corrective actions, as required by paragraph (j) of this AD, if those actions were performed before the effective date of this AD using the service information listed in table 4 of this, provided that power feeder wire bundles W5784 and W5786 were inspected and all applicable correction actions were done.

TABLE 4—PREVIOUS SERVICE INFORMATION FOR PARAGRAPH (J) OF THIS AD

Boeing Special Attention Service Bulletin—	Revision—	Dated—
757–24–0106		September 30, 2004.
757–24–0106	1	June 23, 2005.
757–24–0106	2	April 20, 2006.
757–24–0106	3	October 3, 2006.

(3) This paragraph provides credit for inspections and corrective actions, as required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the service information listed in table 5 of this AD.

TABLE 5—PREVIOUS SERVICE INFORMATION FOR PARAGRAPH (G) OF THIS AD

Boeing Special Attention Service Bulletin—	Revision—	Dated—
757–24–0105	3	October 3, 2006.
757–24–0105	4	January 4, 2008.
757–24–0106	3	October 3, 2006.
757–24–0106	4	January 4, 2008.

(l) Special Flight Permit

Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished, provided that the generator served by the power feeder wire bundles specified in paragraph (g) or (j) of this AD, as applicable, is disconnected.

(m) Alternative Methods of Compliance (AMOCs)

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

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

(3) AMOCs approved previously in accordance with AD 2007–03–01, Amendment 39–14912 (72 FR 3939, January 29, 2007), are approved as AMOCs for the corresponding provisions of paragraph (g) of this AD.

(n) Related Information

For more information about this AD, contact Marie Hogestad, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6418; fax: 425–917–6590; email: *marie.hogestad@faa.gov*.

(o) Material Incorporated by Reference

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

(i) Boeing Special Attention Service Bulletin 757–24–0105, Revision 5, dated July 30, 2009, approved for IBR April 4, 2012.

(ii) Boeing Special Attention Service Bulletin 757–24–0106, Revision 5, dated July 30, 2009, approved for IBR April 4, 2012.

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

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

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

Issued in Renton, Washington, on January 18, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–4428 Filed 2–28–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0030; Directorate Identifier 2009–NM–135–AD; Amendment 39–16940; AD 2012–02–17]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Model 757 airplanes. This AD was prompted reports that several operators have found cracking in the front spar lower chord at the fastener locations common to the side link support fitting at wing station (WS) 292. This AD requires repetitive inspections for corrosion and cracking in this area, and corrective actions if necessary. We are issuing this AD to detect and correct such corrosion and cracking, which, if not corrected, could grow and result in structural failure of the spar.

DATES: This AD is effective April 4, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 4, 2012.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6440; fax: 425–917–6590; email: *nancy.marsh@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM published in the **Federal Register** on January 22, 2010 (75 FR 3660). That NPRM proposed to require repetitive inspections for corrosion and cracking in the front spar lower chord at the fastener locations common to the side link support fitting at wing station (WS) 292, and corrective actions if necessary.

Actions Since Issuance of NPRM (75 FR 3660, January 22, 2010)

The NPRM (75 FR 3660, January 22, 2010) referred to Boeing Special Attention Service Bulletin 757–57–0065, dated May 14, 2009, as the appropriate source of service information for accomplishing the actions. Since issuance of the NPRM, Boeing has issued Special Attention Service Bulletin 757–57–0065, Revision 1, dated August 1, 2011. No more work is necessary for airplanes on which the original issue was used to accomplish the actions. Certain procedures specified in Revision 1 of this service bulletin have been clarified to provide additional instructions.

We have revised this AD to refer to Boeing Special Attention Service Bulletin 757–57–0065, Revision 1, dated August 1, 2011, as the appropriate source of service information for accomplishing the actions. In addition, we added a new paragraph (i) to this AD (and reidentified subsequent paragraphs accordingly) to give credit for using Boeing Special Attention Service Bulletin 757–57–0065, dated May 14, 2009, for accomplishing the actions.

Comments

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

Supportive Comment

Boeing concurred with the content of the NPRM (75 FR 3660, January 22, 2010).

Request To Include Instructions for Airplanes With Unmodified Configurations at the Side Link Fitting

FedEx stated that Figures 2 and 3 of the Boeing Special Attention Service Bulletin 757–57–0065, dated May 14, 2009, show a configuration of the airplane with the modification of the side link fitting accomplished. FedEx added that the procedures in that service information replace the side link

fitting and install additional fasteners attaching the fitting to the lower chord. FedEx noted that it is possible to perform the proposed inspections prior to incorporation of the service information; however, for airplanes on which the configuration may not match that provided in the service information, and on which the inspection has not been accomplished, the inspection steps provided may not match the configuration.

We agree that Figures 2 and 3 of Boeing Special Attention Service Bulletin 757–57–0065, dated May 14, 2009, do not include diagrams of different configurations of the side link fitting for airplanes that may currently be in service. However, as specified under ''Actions Since Issuance of NPRM,'' (75 FR 3660, January 22, 2010) Boeing has issued Special Attention Service Bulletin 757–57–0065, Revision 1, dated August 1, 2011, which clarifies the steps in those figures. In addition, the number of fastener locations specified in the figures was incorrect and they now identify either three or four fastener locations; therefore, we have removed the number ''four'' preceding the phrase ''fastener locations'' throughout this AD.

Request To Include FAA-Approved Repair Data

Continental Airlines (CAL) asked that the NPRM (75 FR 3660, January 22, 2010) include a requirement that any repairs must be approved either by the aircraft certification office (ACO) or an FAA-authorized Boeing Organization Designation Authority (ODA) using data that meets the certification basis of the airplane. FedEx stated that if cracks and corrosion are found, the airplane must be repaired prior to further flight; however, the NPRM and the referenced service information do not give repair instructions. FedEx asked that repair instructions be included in or referred to in the proposed AD requirements. FedEx also noted that in the event of findings, Boeing must be contacted for a repair prior to further flight. CAL also stated that if any corrosion or cracking is found, it is required to submit damage data to Boeing and await disposition and proper approval before accomplishing the repair and releasing the airplane. CAL added that this has the possibility of grounding airplanes beyond an acceptable time for operational requirements while the repair parts are obtained.

We agree that if repair data were available as part of the service information, it would allow a quicker return to service for airplanes on which damage is found during the inspections. However, at this time the repair data are not currently available; therefore, the data cannot be included in the AD. We have made no change to the AD in this regard.

Request To Include Repair and Corrosion Limitations

CAL stated that the referenced service information does not include any specified limits for the repair, and added that corrosion limitations and related actions should be included for existing approved crack repairs. CAL noted that Boeing Special Attention Service Bulletin 757–57–0065, dated May 14, 2009, states that several repairs have been accomplished addressing crack lengths to 0.080 inch, and the service history table in the Background section of this service information lists six instances of cracking with pre-existing, pre-approved repairs from Boeing. CAL added that all but one reported instance included oversizing of the discrepant holes and freeze plug installation. CAL believes that these existing repairs should be included either in the service information or the structural repair manual, and subsequently added as repair actions in the proposed AD prior to issuance.

We do not agree that the corrosion limitations and related actions should be included in this AD for existing approved crack repairs. Boeing maintains information related to pre-existing, pre-approved repairs. We have delegated authority to make findings concerning repairs related to this AD to the Boeing Commercial Airplanes ODA. Under the provisions of paragraph (j) of this AD, we will consider requests to accept the use of standard repairs developed by Boeing or the operator if sufficient data are submitted to substantiate that the repair would provide an acceptable level of safety. We have made no change to the AD in this regard.

Request To Extend Compliance Time

European Air Transport and DHL asked that we extend the interval for the repetitive inspections in the NPRM (75 FR 3660, January 22, 2010) to the next 4C check or 12,000 flight cycles from the date of the referenced service information, whichever occurs first. These commenters stated that they are already performing the inspection at the next 4C check and at intervals of 12,000 flight cycles. These commenters added that the fuel tanks are only purged during a 4C check, which has an interval of 12,000 flight cycles, 24,000 flight hours, and 72 months, whichever occurs first. The commenters noted that, if the proposed interval is maintained, the fuel tanks will need to be purged during a 1C or 2C check, and this will create additional downtime and costs for the inspection.

We do not agree with the commenters' request. The repetitive inspection interval was determined using a damage tolerance analysis and is appropriate to adequately address the unsafe condition. Under the provisions of paragraph (j) of this AD, operators may request approval of an alternative method of compliance (AMOC) if sufficient data are submitted to substantiate that the request would provide an acceptable level of safety. We have not changed the AD in this regard.

Request To Supersede Related ADs

FedEx asked that we supersede related AD 2003–18–05, Amendment 39–13296 (68 FR 53496, September 11, 2003); and AD 2004–12–07, Amendment 39–13666 (69 FR 33561, June 16, 2004). FedEx stated that the NPRM (75 FR 3660, January 22, 2010) should be approved as ancillary inspections to these ADs. FedEx added that this would maintain current AD maintenance documents and prevent future misinterpretation of the AD modification and inspection requirements.

We agree that the subject inspections are in the same area as the modifications required by AD 2003–18–05 (68 FR 53496, September 11, 2003) and AD 2004–12–07 (69 FR 33561, June 16, 2004). We also agree that accomplishing the inspections required by this AD could be cited as related actions to the actions included in AD 2003–18–05 and AD 2004–12–07. In the event that those ADs are superseded, this AD could be included as related rulemaking.

The actions required by those ADs (mandating strut modifications) are complex and require compliance times which would not correlate with the compliance times in this AD. Therefore, we do not agree that this AD should supersede AD 2003–18–05 (68 FR 53496, September 11, 2003) and AD 2004–12–07 (69 FR 33561, June 16, 2004). We have not changed the AD in this regard.

Additional Change Made to This Final Rule

We have revised the heading for and wording in paragraph (i) of this AD; this change has not changed the intent of that paragraph.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the

public interest require adopting the AD with the changes described previously—and minor editorial changes. We have determined that these minor changes:

• Are consistent with the intent that was proposed in the NPRM (75 FR 3660, January 22, 2010) for correcting the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM (75 FR 3660, January 22, 2010).

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

Explanation of Change to Costs of Compliance

Since issuance of the NPRM (75 FR 3660, January 22, 2010), we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified labor rate.

Costs of Compliance

We estimate that this AD affects 668 airplanes of U.S. registry. We also estimate that it will take about 6 work-hours per airplane to comply with this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $340,680 per inspection cycle, or $510 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–02–17 The Boeing Company: Amendment 39–16940; Docket No. FAA–2010–0030; Directorate Identifier 2009–NM–135–AD.

(a) Effective Date

This AD is effective April 4, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD results from reports of cracking at the front spar lower chord at the fastener locations common to the side link support fitting at wing station (WS) 292. The Federal Aviation Administration is issuing this AD to detect and correct such cracking and corrosion, which, if not corrected, could grow and result in structural failure of the spar.

(f) Compliance

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

(g) Inspect for Cracking and Corrosion

At the later of the times in paragraphs (g)(1) and (g)(2) of this AD, do ultrasonic and general visual inspections for cracking and corrosion of the front spar lower chord at the fastener locations common to the side link support fitting at WS 292, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–57–0065, Revision 1, dated August 1, 2011. Where Boeing Special Attention Service Bulletin 757–57–0065, Revision 1, dated August 1, 2011, specifies a compliance time ''after the date on this service bulletin,'' this AD requires compliance at the specified time after the effective date of this AD. Repeat the inspection thereafter at intervals not to exceed 12,000 flight cycles.

(1) At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 757–57–0065, Revision 1, dated August 1, 2011.

(2) Within 12,000 flight cycles after doing the modification of the nacelle and wing structure specified in Boeing Service Bulletin 757–54–0034 or Boeing Service Bulletin 757–54–0035.

(h) Corrective Action

If any cracking or corrosion is found during any inspection required by this AD: Before further flight, repair the cracking or corrosion using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Credit for Previous Actions

This paragraph provides credit for actions required by this AD if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 757–57–0065, dated May 14, 2009.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. Send information to ATTN: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6440; fax: 425–917–6590; email: *nancy.marsh@faa.gov*.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle

ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

(k) Material Incorporated by Reference

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

(i) You must use Boeing Special Attention Service Bulletin 757–57–0065, Revision 1, dated August 1, 2011; to do the actions required by this AD, unless the AD specifies otherwise.

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

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on January 24, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–4429 Filed 2–28–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1227; Directorate Identifier 2011–NM–100–AD; Amendment 39–16957; AD 2012–04–02]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes; Model CL–600–2D15 (Regional Jet Series 705) airplanes; and Model CL–600–2D24 (Regional Jet Series 900) airplanes. This AD was prompted by reports of aileron control stiffness. This AD requires revising the maintenance program to incorporate the discard task for outboard wing aileron pulleys. We are issuing this AD to prevent aileron control stiffness during flight, which could result in reduced controllability of the airplane.

DATES: This AD becomes effective April 4, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 4, 2012.

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

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 8, 2011 (76 FR 69161). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> A number of reports of aileron control stiffness have been received on Bombardier Regional Jet aeroplanes. Bombardier has reviewed the current maintenance tasks for the aileron control system and determined that an additional maintenance task is required.
>
> This directive mandates revision of the approved maintenance schedule to incorporate the discard task for outboard wing aileron pulleys to prevent aileron control stiffness during flight which could result in reduced controllability of the aeroplane.

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

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. The commenter, Air Line Pilots Association, International, supports the NPRM (76 FR 69161, November 8, 2011).

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (76 FR 69161, November 8, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 69161, November 8, 2011).

Costs of Compliance

We estimate that this AD will affect 398 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $33,830, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 69161, November 8, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–04–02 Bombardier, Inc.: Amendment 39–16957. Docket No. FAA–2011–1227; Directorate Identifier 2011–NM–100–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 4, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes; Model CL–600–2D15 (Regional Jet Series 705) airplanes; and Model CL–600–2D24 (Regional Jet Series 900) airplanes; certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by reports of aileron control stiffness. We are issuing this AD to prevent aileron control stiffness during flight, which could result in reduced controllability of the airplane.

(f) Compliance

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

(g) Actions

Within 30 days after the effective date of this AD: Revise the maintenance program to incorporate Task 271000–218, Discard of the Outboard Wing Aileron Pulleys, as specified in Bombardier Temporary Revision (TR) 1–41, dated October 22, 2010, to Section 2—Systems/Powerplant Program of Part 1 of the Bombardier CL–600–2C10, CL–600–2D15, CL–600–2D24, CL–600–2E25 Maintenance Requirements Manual (MRM). For this task, the initial compliance time starts at the applicable time specified in paragraphs (g)(1), (g)(2), (g)(3), or (g)(4) of this AD. Thereafter, operate the airplane according to the procedures and compliance times in Bombardier TR 1–41, dated October 22, 2010.

(1) For airplanes with 10,000 or less total flight hours as of the effective date of this AD: Prior to the outboard wing aileron pulley accumulating 12,000 total flight hours.

(2) For airplanes with more than 10,000 total flight hours but with 16,000 total flight hours or less as of the effective date of this AD: Prior to the outboard wing aileron pulley accumulating 17,300 total flight hours, or within 2,000 flight hours after the effective date of this AD, whichever is earlier.

(3) For airplanes with more than 16,000 total flight hours but with 20,000 total flight hours or less as of the effective date of this AD: Prior to the outboard wing aileron pulley accumulating 20,800 total flight hours, or within 1,300 flight hours after the effective date of this AD, whichever is earlier.

(4) For airplanes with more than 20,000 total flight hours as of the effective date of this AD: Within 800 flight hours after the effective date of this AD.

Note 1 to paragraph (g) of this AD: The actions required by paragraph (g) of this AD may be done by inserting a copy of Bombardier TR 1–41, dated October 22, 2010, into Section 2—Systems/Powerplant Program of Part 1 of the Bombardier CL–600–2C10, CL–600–2D15, CL–600–2D24, CL–600–2E25 MRM. When this TR has been included in the general revisions of the MRM, the general revisions may be inserted in the MRM, and the TR may be removed from the MRM, provided that the relevant information in the general revision is identical to that in Bombardier TR 1–41, dated October 22, 2010.

(h) No Alternative Actions or Intervals

After accomplishing the revision required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (i)(1) of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(j) Related Information

Refer to MCAI Transport Canada Civil Aviation Airworthiness Directive CF–2011–07, dated April 26, 2011; and Bombardier TR 1–41, dated October 22, 2010, to Section 2—Systems/Powerplant Program of Part 1 of the Bombardier CL–600–2C10, CL–600–2D15, CL–600–2D24, CL–600–2E25 MRM; for related information.

(k) Material Incorporated by Reference

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

(i) Bombardier Temporary Revision 1–41, dated October 22, 2010, to Section 2—Systems/Powerplant Program of Part 1 of the Bombardier CL–600–2C10, CL–600–2D15, CL–600–2D24, CL–600–2E25 Maintenance Requirements Manual, approved for IBR April 4, 2012.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on February 9, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–3892 Filed 2–28–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1166; Directorate Identifier 2010–NM–169–AD; Amendment 39–16941; AD 2012–02–18]

RIN 2120–AA64

Airworthiness Directives; DASSAULT AVIATION Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all DASSAULT AVIATION Model MYSTERE-FALCON 50 airplanes. This AD was prompted by reports of cracking of the flap tracks. This AD requires revising the maintenance program to include revised airworthiness limitations. We are issuing this AD to prevent cracking of the flap tracks, which could lead to flap asymmetry and loss of control of the airplane.

DATES: This AD becomes effective April 4, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 4, 2012.

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 2, 2011 (76 FR 67633). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> The Maintenance Procedure (MP) 57–607, related to non destructive check of the flap tracks 2 and 5, has been introduced thru revision 4 (01/2009) of section 5–10 of the Recommended Maintenance Schedules chapter of the Aircraft Maintenance Documentation.
>
> After the implementation of this MP cracks have been detected in service.
>
> * * * * *

Cracking of the flap tracks could lead to flap asymmetry and loss of control of the airplane. The required actions include revising the maintenance program to include ''Non-Destructive Check of Flap Tracks 2 and 5,'' Maintenance Procedure 57–607, of Chapter 5–40, ''Airworthiness Limitations,'' of the Dassault Falcon 50/50EX Maintenance Manual, Revision 21, dated June 2011. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (76 FR 67633, November 2, 2011) or on the determination of the cost to the public.

Explanation of Change Made to This AD

We have revised the document citation for the service information referenced throughout this AD.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD with the change described previously—except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (76 FR 67633, November 2, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 67633, November 2, 2011).

Costs of Compliance

We estimate that this AD will affect 250 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $21,250, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 67633,

November 2, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–02–18 DASSAULT AVIATION: Amendment 39–16941. Docket No. FAA–2011–1166; Directorate Identifier 2010–NM–169–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 4, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to DASSAULT AVIATION Model MYSTERE-FALCON 50 airplanes, all serial numbers, certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by reports of cracking of the flap tracks. We are issuing this AD to prevent cracking of the flap tracks, which could lead to flap asymmetry and loss of control of the airplane.

(f) Compliance

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

(g) Actions

Within 30 days after the effective date of the AD, revise the maintenance program to include ''Non-Destructive Check of Flap Tracks 2 and 5,'' Maintenance Procedure 57–607, of Chapter 5–40, ''Airworthiness Limitations,'' of the Dassault Falcon 50/50EX Maintenance Manual, Revision 21, dated June 2011. The initial compliance time for doing the check is prior to the accumulation of 7,900 total flight cycles or within 600 flight cycles after the effective date of this AD, whichever occurs later.

(h) No Alternative Actions or Intervals

After accomplishing the revision required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (i)(1) of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(j) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0080, dated April 29, 2010; and ''Non-Destructive Check of Flap Tracks 2 and 5,'' Maintenance Procedure 57–607, of Chapter 5–40, ''Airworthiness Limitations,'' of the Dassault Falcon 50/50EX Maintenance Manual, Revision 21, dated June 2011; for related information.

(k) Material Incorporated by Reference

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

(i) ''Non-Destructive Check of Flap Tracks 2 and 5,'' Maintenance Procedure 57–607, of Chapter 5–40, ''Airworthiness Limitations,'' of the Dassault Falcon 50/50EX Maintenance Manual, Revision 21, dated June 2011.

(A) Only the title page of Chapter 5–40 specifies the revision level of 21, dated June 2011; the remaining pages show only the revision date of June 2011.

(B) The pages of the maintenance procedure show a revision date of January 2009.

(2) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.*

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

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

Issued in Renton, Washington, on January 26, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–3908 Filed 2–28–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1067; Directorate Identifier 2011–NM–034–AD; Amendment 39–16944; AD 2012–03–03]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Fokker Services B.V. Model F.27 Mark 050 and F.28 Mark 0070 and 0100 airplanes. This AD was prompted by reports that the brightness of the tritium exit signs and lighting strips deteriorated below accepted levels. This AD requires a detailed inspection of tritium exit signs and emergency lighting strips, and replacement if necessary. We are issuing this AD to detect and correct insufficient brightness of the tritium exit signs and lighting strips, which could lead to an unsafe evacuation during an emergency, possibly resulting in injury to occupants.

DATES: This AD becomes effective April 4, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 4, 2012.

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 11, 2011 (76 FR 62658). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> As required by current certification standards, each transport aeroplane has passenger compartment exit signs and emergency lighting strips installed to locate the emergency exits. A number of these strips and signs are not electrically powered, but are self illuminated by means of a hydrogen isotope, known as Tritium. As this isotope decays over time, these signs will [lose] their brightness.
>
> To remain compliant with regulations, Tritium exit signs and lighting strips should be replaced when their brightness has deteriorated below accepted levels. Currently, the Maintenance Review Board (MRB) Maintenance Planning Document does not include an inspection task for signs and strips containing Tritium.
>
> This condition, if not detected and corrected, could result in insufficiently bright exit signs and lighting strips, preventing safe evacuation during an emergency, possibly resulting in injury to occupants.
>
> To correct this unsafe condition, EASA issued AD 2010–0200, which required [a detailed visual] inspection of the brightness of all Tritium exit signs and strips and, depending on findings, replacement of insufficiently bright signs and lighting strips.
>
> Following the issuance of [EASA] AD 2010–0200, Fokker Services discovered that one Service Bulletin (SB), SBF100–33–023, contained errors in the two groups of aeroplane serial numbers and, consequently, in the related instructions for those aeroplanes in that SB.
>
> For the reasons described above, this new [EASA] AD retains the requirements of EASA AD 2010–0200, which is superseded, amends the Applicability and refers to Revision 1 of SBF100–33–023 for the accomplishment instructions.
>
> **Note:** The MRB document will be updated before July 2011 to include an appropriate maintenance task to ensure that the Tritium exit signs and lighting strips meet the minimum brightness requirements.

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

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. The commenter supports the NPRM (76 FR 62658, October 11, 2011).

Additional Change Made to This Final Rule

We have revised the heading for and wording in paragraph (i) of this AD; this change has not changed the intent of that paragraph.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD with the change described previously—and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (76 FR 62658, October 11, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 62658, October 11, 2011).

Costs of Compliance

We estimate that this AD will affect 4 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $340, or $85 per product.

In addition, we estimate that any necessary follow-on actions would take about 2 work-hours and require parts costing $833, for a cost of $1,003 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 62658, October 11, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–03–03 Fokker Services B.V.: Amendment 39–16944. Docket No. FAA–2011–1067; Directorate Identifier 2011–NM–034–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 4, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Fokker Services B.V. Model airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category.

(1) F.27 Mark 050 airplanes having serial numbers (S/Ns): 20104, 20105, 20121 through 20123 inclusive, 20130 through 20135 inclusive, 20141 through 20145 inclusive, 20150, 20156 through 20176 inclusive, 20178 through 20180 inclusive, 20182 through 20199 inclusive, 20202, 20204 through 20207 inclusive, 20210, 20211, 20213 through 20252 inclusive, 20254 through 20266 inclusive, 20270 through 20279 inclusive, 20281, 20283 through 20288 inclusive, 20296 through 20303 inclusive, 20306, 20307, 20312, 20313, 20316, 20317, 20328, 20331, 20333, and 20335.

(2) F.28 Mark 0070 and 0100 airplanes having S/Ns: 11257, 11258, 11262, 11264 through 11266 inclusive, 11287, 11301, 11317, 11340, 11342, 11352 through 11356 inclusive, 11360, 11368 through 11370 inclusive, 11376, 11377, 11385, 11395, 11402, 11403, 11405 through 11408 inclusive, 11411 through 11419 inclusive, 11425 through 11428 inclusive, 11434 through 11437 inclusive, 11447 through 11449 inclusive, 11457 through 11459 inclusive, 11467, 11469, 11478, 11479, 11481, 11482, 11487, 11492 through 11495 inclusive, 11497, 11498, 11501, 11503, 11506, 11507, 11509, 11514, 11521, 11528, 11529, 11532, 11536 through 11541 inclusive, 11543, 11545, 11547, 11549, 11551, 11553 through 11583 inclusive, and 11585.

(3) F.28 Mark 0100 airplanes, if in a post-Fokker Service Bulletin SBF100–52–060 configuration, having S/Ns: 11244 through 11256 inclusive, 11259 through 11261 inclusive, 11263, 11267 through 11286 inclusive, 11288 through 11300 inclusive, 11302 through 11316 inclusive, 11318 through 11339 inclusive, 11341, 11343 through 11351 inclusive, 11357 through 11367 inclusive, 11371 through 11375 inclusive, 11378 through 11384 inclusive, 11386 through 11394 inclusive, 11396 through 11401 inclusive, 11404, 11409, 11410, 11420 through 11424 inclusive, 11429 through 11433 inclusive, 11438 through 11446 inclusive, 11450 through 11456 inclusive, 11460 through 11466 inclusive, 11468, 11470 through 11477 inclusive, 11480, 11483 through 11486 inclusive, 11488 through 11491 inclusive, 11496, 11499, 11500, 11502, 11504, 11505, 11508, 11510 through 11513 inclusive, 11515 through 11520 inclusive, 11522, 11523, and 11527.

(d) Subject

Air Transport Association (ATA) of America Code 33: Lights.

(e) Reason

This AD was prompted by reports that the brightness of the tritium exit signs and lighting strips deteriorated below accepted levels. We are issuing this AD to detect and correct insufficient brightness of the tritium exit signs and lighting strips, which could lead to an unsafe evacuation during an emergency, possibly resulting in injury to occupants.

(f) Compliance

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

(g) Actions

Within six months after the effective date of this AD, do a detailed visual inspection of the tritium exit signs and emergency lighting strips for required brightness, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF50–33–038, dated July 5, 2010; or SBF100–33–023, Revision 1, dated November 4, 2010; as applicable. If any exit signs or emergency lighting strips are insufficiently bright, before further flight, replace the exit signs or emergency lighting strips, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF50–33–038, dated July 5, 2010; or SBF100–33–023, Revision 1, dated November 4, 2010; as applicable. A review of airplane maintenance records is acceptable in lieu of the inspection in this paragraph if the tritium exit signs and emergency lighting strips can be conclusively determined to have been manufactured in 2003 or earlier, from that review; however, the replacement in this paragraph must be accomplished before further flight after doing the review.

(h) Parts Installation

As of the effective date of this AD, no person may install any tritium exit signs or emergency lighting strips if the manufacturing date is seven years or more before the intended installation date, or if the manufacturing date cannot be determined; unless the tritium exit sign or emergency lighting strip has been inspected in accordance with paragraph (g) of this AD, and does not need replacement.

(i) Credit for Previous Actions

This paragraph provides credit for inspection and replacement of the tritium exit sign or emergency lighting strip, as required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Fokker Service Bulletin SBF100–33–023, dated July 5, 2010, as applicable.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(k) Related Information

Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2010–0261, dated December 9, 2010; for related information.

(1) Fokker Service Bulletin SBF50–33–038, dated July 5, 2010; and

(2) Fokker Service Bulletin SBF100–33–023, Revision 1, dated November 4, 2010.

(l) Material Incorporated by Reference

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

(i) Fokker Service Bulletin SBF50–33–038, dated July 5, 2010.

(ii) Fokker Service Bulletin SBF100–33–023, Revision 1, dated November 4, 2010.

(2) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; email *technicalservices.fokkerservices@stork.com;* Internet *http://www.myfokkerfleet.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the

availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on January 26, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–4437 Filed 2–28–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0182; Directorate Identifier 2012–CE–005–AD; Amendment 39–16958; AD 2012–03–52]

RIN 2120–AA64

Airworthiness Directives; Mooney Aviation Company, Inc. (Mooney) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Mooney Aviation Company, Inc. (Mooney) Models M20R and M20TN airplanes. This emergency AD was sent previously to all known U.S. owners and operators of these airplanes. This AD requires inspecting the tail pitch trim assembly for correct positioning and proper attachment and inspecting the Huck Bolt fasteners for proper security with repair as necessary. The AD also requires sending the inspection results to the FAA and Mooney. This AD was prompted by a report of an incident on a Mooney Model M20TN airplane regarding failure of the tail pitch trim assembly, which could result in loss of control. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective February 29, 2012 to all persons except those persons to whom it was made immediately effective by Emergency AD 2012–03–52, issued on February 10, 2012, which contained the requirements of this amendment.

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

We must receive comments on this AD by April 16, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this AD, contact Mooney Aviation Company, Inc., 165 Al Mooney Road North, Kerrville, Texas 78028; telephone: (830) 896–6000; email: *technicalsupport@mooney.com;* Internet: *www.mooney.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Andrew McAnaul, Aerospace Engineer, ASW–150 (c/o MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; facsimile: (210) 308–3370; email: *andrew.mcanaul@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On February 10, 2012, we issued Emergency AD 2012–03–52, which requires inspecting the trim fitting, hinge, and filler plate of the tail pitch trim assembly for correct positioning and proper attachment and inspecting the Huck Bolt fasteners for proper security on certain Mooney Aviation Company, Inc. (Mooney) Models M20R and M20TN airplanes. If incorrect positioning or improper/loose attachment is found, the owner/operator must contact Mooney for FAA-approved repair instructions. The AD also requires sending the inspection results to the FAA and Mooney. This emergency AD was sent previously to all known U.S. owners and operators of these airplanes.

This AD action was prompted by a report of an incident on a Mooney Model M20TN airplane regarding the tail pitch trim assembly. In this report, the affected airplane experienced an un-commanded significant pitch up attitude within seconds after takeoff and during the climb. The pilot then pushed the yoke forward and the aircraft still maintained a nose-up attitude.

The pilot stated that the ''forces acting on the control column were so large that single pilot wasn't able to handle that for more than just a few minutes.'' The pilot and copilot had to use their knees to hold forward pressure on the flight controls to aid in preventing a departure from controlled flight. They had to maintain between 80 to 100 percent power to keep the aircraft at about 90 knots indicated airspeed to prevent the airplane from stalling. The only way they were able to descend was to introduce a series of turns.

On Mooney Models M20TN and M20R airplanes, the pitch trim is adjusted by rotating the entire tail assembly. The actuating arm pushes on a hinge fixed to the empennage forward bulkhead. The hinge attaches to the bulkhead using 10 Huck Bolt fasteners with swaged collars.

This aircraft was immediately inspected, and all 10 swaged collars that hold the tail trim assembly together had become unattached.

Mooney inspected several other aircraft and found that on one airplane the filler plate was incorrectly installed. The filler plate was not correctly installed between the aft side of the hinge and the bulkhead. Instead, the filler plate was located on the forward side of the hinge between the hinge and trim fitting. It was then noted the incident aircraft had the same issue, as shown in the upper circle of figure 1.

Because the hinge has a lip on the bottom, on the side toward the bulkhead (as shown in the bottom circle of figure 1), if the filler plate is not installed correctly, the hinge will not fit flush against the bulkhead, the Huck Bolt fasteners will not fit perpendicular to the bulkhead, and the collars will not swage properly. The condition also causes excessive tension pre-load on the Huck Bolts.

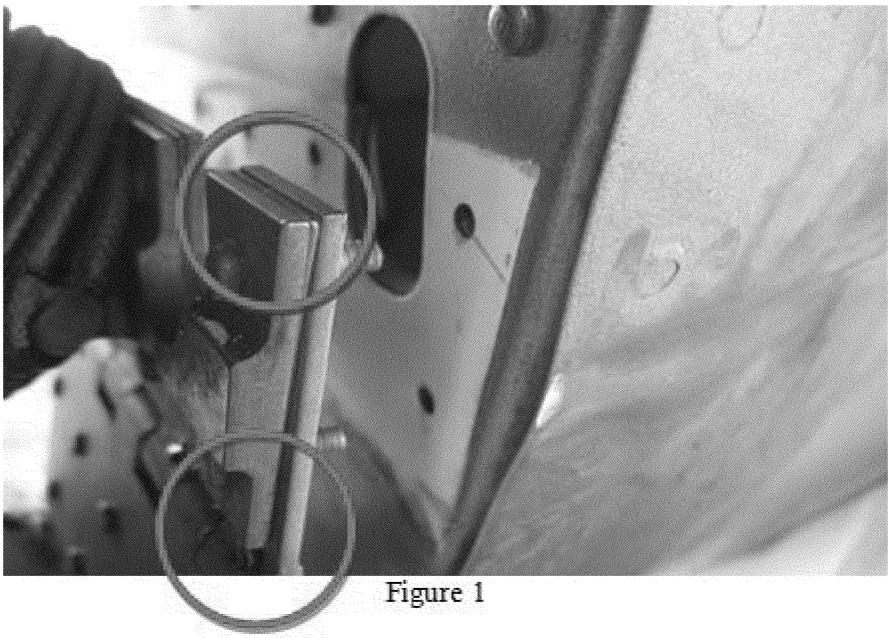

Figure 1

The incident aircraft was manufactured in 2008. Mooney has determined the incorrect installation was a manufacturing quality escape during production.

We are issuing this AD to detect incorrect positioning and improper attachment of the trim fitting, hinge, and filler plate of the tail pitch trim assembly and to verify security of the attaching Huck Bolt fasteners, which could lead to failure of the tail pitch trim assembly with consequent loss of pitch control.

Relevant Service Information

We reviewed Mooney Aviation Company, Inc. Service Bulletin No. M20–313, dated February 7, 2012. The service information describes procedures for inspecting the trim fitting, hinge, filler plate, and attaching fasteners of the tail pitch trim assembly.

FAA's Determination

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

AD Requirements

This AD requires inspecting the trim fitting, hinge, and filler plate of the tail pitch trim assembly for correct positioning and proper attachment, and inspecting the Huck Bolt fasteners for proper security. If incorrect positioning or improper/loose attachment is found, the owner/operator must contact Mooney for FAA-approved repair instructions. The AD also requires sending the inspection results to the FAA and Mooney.

Interim Action

We consider this AD interim action. Mooney and the FAA will analyze the results of the inspection required by this AD. We may take further rulemaking action in the future.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because failure of the tail pitch trim assembly could result in loss of control. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2012–0182 and Directorate Identifier 2012–CE–005–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD affects 170 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of the trim fitting, hinge, and filler plate of the tail pitch trim assembly, and security of the Huck Bolt fasteners, and reporting the inspection results.	1 work-hour × $85 per hour = $85.	Not applicable ...	$85	$14,450

We have no way of determining the cost of repair/replacement at this time. We have no way of determining the number of aircraft that might need repair or replacement.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–03–52 Mooney Aviation Company, Inc. (Mooney): Amendment 39–16958; Docket No. FAA–2012–0182; Directorate Identifier 2012–CE–005–AD.

(a) Effective Date

This AD is effective February 29, 2012 to all persons except those persons to whom it was made immediately effective by Emergency AD 2012–03–52, issued on February 10, 2012, which contained the requirements of this amendment.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Mooney Aviation Company, Inc. airplanes, certificated in any category:

Models	Serial Nos.
(1) M20R	29–0465 through 29–0519.
(2) M20TN	31–0003 through 31–0127.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 55; Stabilizers.

(e) Unsafe Condition

This AD was prompted by a report of an incident on a Mooney Model M20TN airplane regarding failure of the tail pitch trim assembly. We are issuing this AD to detect incorrect positioning and improper attachment of the trim fitting, hinge, and filler plate of the tail pitch trim assembly; and detect improper security of the Huck Bolt fasteners to prevent failure of the tail pitch trim assembly, which could result in loss of control.

(f) Compliance

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

(g) Inspection

Before further flight after receipt of this AD, inspect the trim fitting, hinge, and filler plate of the tail pitch trim assembly for correct positioning and proper attachment; and also inspect that the Huck Bolt fasteners are properly secured following Mooney Aviation Company, Inc. Service Bulletin No. M20–313, dated February 7, 2012.

(h) Corrective Action

If during the inspection required in paragraph (g) of this AD you find incorrect positioning or improper attachment of the trim fitting, hinge, and filler plate of the tail pitch trim assembly; and/or you find loose or improperly installed Huck Bolt fasteners, before further flight, contact Mooney for FAA-approved repair instructions and perform the repair. Use the contact information found in paragraph (n)(2) of this AD.

(i) Reporting Requirement

Within 24 hours after the inspection required in paragraph (g) of this AD, send the inspection results to Mooney and to the FAA using the following contact information. Use the form on page 4 of Mooney Aviation Company, Inc. Service Bulletin No. M20–313, dated February 7, 2012, to comply with this AD action:

(1) Mooney Aviation Company, Inc., 165 Al Mooney Road North, Kerrville, Texas 78028; telephone: (830) 896–6000; email: *technicalsupport@mooney.com;* Internet: *www.mooney.com;* and

(2) Andrew McAnaul, Aerospace Engineer, ASW–150 (c/o MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; facsimile: (210) 308–3370; email: *andrew.mcanaul@faa.gov.*

(j) Special Flight Permit

Special flight permits are prohibited for this AD.

(k) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to

respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(l) Alternative Methods of Compliance (AMOCs)

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

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

(m) Related Information

For more information about this AD, contact Andrew McAnaul, Aerospace Engineer, ASW–150 (c/o MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; facsimile: (210) 308–3370; email: *andrew.mcanaul@faa.gov.*

(n) Material Incorporated by Reference

(1) You must use Mooney Aviation Company, Inc. Service Bulletin No. M20–313, dated February 7, 2012, to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Mooney Aviation Company, Inc., 165 Al Mooney Road North, Kerrville, Texas 78028; telephone: (830) 896–6000; email: *technicalsupport@mooney.com;* Internet: *www.mooney.com.*

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

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

Issued in Kansas City, Missouri, on February 16, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–4176 Filed 2–28–12; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1224

[CPSC Docket No. CPSC–2011–0019]

Safety Standard for Portable Bed Rails: Final Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: Section 104(b) of the Consumer Product Safety Improvement Act of 2008 (''CPSIA'') requires the U.S. Consumer Product Safety Commission (''CPSC,'' ''Commission,'' or ''we'') to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be ''substantially the same as'' applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. In this rule, the Commission is issuing a safety standard for portable bed rails in response to the CPSIA.[1]

DATES: The rule will become effective August 29, 2012 and apply to product manufactured or imported on or after that date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of August 29, 2012.

FOR FURTHER INFORMATION CONTACT: Rohit Khanna, Project Manager, Office of Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone (301) 987–2508 ; *rkhanna@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background: Section 104(b) of the Consumer Product Safety Improvement Act

The Consumer Product Safety Improvement Act of 2008, Public Law 110–314 (''CPSIA'') was enacted on August 14, 2008. Section 104(b) of the CPSIA requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be ''substantially the same as'' applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The term ''durable infant or toddler product'' is defined in section 104(f) of the CPSIA as a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years. Portable bed rails (also referred to as ''bed rail'' or ''bedrail'') are one of the products identified by the Commission under section 104(f) of the CPSIA as durable infant or toddler products. On December 29, 2009, the Commission issued requirements for consumer registration of durable infant or toddler products and a bed rail was identified as a durable infant or toddler products that needed to comply with the registration card requirements. 76 FR 68668.

In the **Federal Register** of April 11, 2011 (76 FR 19914), we published a proposed rule that would incorporate by reference ASTM F2085–10a, ''Standard Consumer Safety Specification for Portable Bed Rails'' but with several modifications that strengthen the standard. In response to the proposed rule and based on comments to the proposed rule, the ASTM Subcommittee on Portable Bed Rails, in collaboration with CPSC staff, developed a newer edition of the standard, ASTM F2085–12, ''Standard Consumer Safety Specification for Portable Bed Rails,'' which incorporates many of the proposed modifications in the proposed rule, with a few clarifications and modifications that strengthen the standard. ASTM F2085–12 contains more stringent requirements than its predecessor, ASTM F2085–10a, and would further reduce the risk of injury associated with portable bed rails. In this document, we are issuing a safety standard for portable bed rails, which incorporates by reference, the new voluntary safety standard developed by ASTM International (formerly known as the American Society for Testing and Materials), ASTM F2085–12, ''Standard Consumer Safety Specification for Portable Bed Rails.'' We summarize the proposed rule and discuss the final rule (including differences between the proposal and the final rule) in section F of this preamble. The information discussed in this preamble comes from CPSC staff's briefing package for the portable bed rails final rule, which is

[1] The Commission voted 4–0 to approve publication of this final rule.

available on the CPSC's Web site at *http://www.cpsc.gov/library/foia/foia12/brief/briefing.html.*

B. The Product

ASTM F2085–12, and its predecessor ASTM F2085–10a, define a ''portable bed rail'' as a ''portable railing installed on the side of an adult bed and/or on the mattress surface which is intended to keep a child from falling out of bed.'' The scope of ASTM F2085–12, and its predecessor, ASTM F2085–10a, also states that a portable bed rail ''is as a device intended to be installed on an adult bed to prevent children from falling out of bed.'' Portable bed rails are intended for children (typically from 2 to 5 years of age) who can get in and out of an adult bed unassisted. They include bed rails that only have a vertical plane that presses against the side of the mattress but does not extend over it (referred to as ''adjacent type bed rails''), as well as bed rails that extend over the sleeping surface of the mattress (called ''mattress-top bed rails'').

As discussed in the preamble to the proposed rule, a review of market information showed that there are products that differ from traditional, rigid portable bed rails in that they are constructed of nonrigid (also referred to as ''non-rigid'') materials, such as foam or inflatable materials. (76 FR 19915 through 19916). Although these foam and inflatable products do not use the term ''bed rails'' in their packaging or labeling, we stated that such products meet the definition of a portable bed rail and should be included in the scope of the standard. However, most of the performance requirements in the ASTM standard, which pertain to traditional, rigid portable bed rails, did not apply to these products because the standard was developed to address the hazards from portable bed rails constructed from rigid (wood/metal) materials. Accordingly, the revised ASTM F2085–12 standard now covers foam and inflatable products but would require that only certain relevant provisions of the standard apply to such bed rails.

Both portable bed rails made for a specific manufacturer's adult-size beds and ''universal'' bed rails that can attach to any *adult-size bed* are included in the scope of ASTM F2085–12 and its predecessor, ASTM F2085–10a. However, as we stated in the preamble to the proposed rule (76 FR 19916), guard rails that are used with crib mattresses on toddler beds are not covered under this voluntary standard. They are addressed under the Consumer Safety Specification for Toddler Beds. Other products that are not covered include: side rails that connect the headboard to the footboard and may or may not have any barrier purposes; conversion rails intended to convert a crib to a full-size bed; and adult-size beds, where the rail is permanently attached to the bed (*i.e.,* bunk beds). ASTM F2085–12 now makes it clear that such products are not covered under the standard.

Additionally, the U.S. Food and Drug Administration (''FDA'') has several regulations pertaining to hospital beds, including a regulation for pediatric hospital beds (21 CFR 880.5140). The FDA regulations, in general, identify a hospital bed as having (among other things) movable and latchable side rails. If a pediatric hospital bed is subject to regulation by the FDA as a medical device, then the bed rails on that pediatric hospital bed are outside the scope of this final rule.

C. Incident Data

The preamble to the proposed rule (76 FR 19916 through 19917) summarized the data for incidents from January 1, 2000 through March 31, 2010, related to portable bed rails. For that period, we received reports of a total of 132 incidents related to portable bed rails. Among the 132 reported incidents, there were 13 fatalities, 40 nonfatal injuries, and 79 noninjury incidents. Of the 13 child fatalities reported involving portable bed rails, most children (9 out of 13) were under 1 year old; two were between 1 and 2 years old; and two children, both physically handicapped, were 6 years old. Of the 13 fatalities, there were two deaths that resulted from portable bed rail displacement, when the portable bed rail partially pushed away from beneath the mattress and allowed the child to fall into the opening and get trapped. There were three cases of portable bed rail misassembly. In three additional fatal incidents, not enough information was available to determine the contributing factor(s) that led to the hazardous entrapment scenario. The beds used in the eight cases mentioned previously were adult-size beds. More information concerning these incidents is provided in the preamble to the proposed rule (76 FR 19916 through 19917).

On the remaining five fatalities (out of 13), after publication of the proposed rule, we received additional information, through in-depth follow-up investigations on 4 deaths out of the 5 remaining fatalities that were listed as having insufficient information at the time of publication of the proposed rule. One of the 4 fatalities included among the incident data in the portable bed rail proposed rule is now known to have occurred from partial displacement of the bed rail, which led to the entrapment of the decedent. A second fatality listed previously as lacking sufficient information, still remains in that status. The third fatality is now known not to involve any portable bed rail; what was originally reported as a bed rail has now been confirmed to be a crib rail. Finally, it seems unlikely that the fourth fatality was associated with a portable bed rail. The decedent, co-sleeping with a sibling and a parent, suffocated. The role, if any, of a portable bed rail, now seems questionable. A fifth fatality could not be investigated because the victim's name was not released.

While preparing a final rule, CPSC staff also conducted a new search of the CPSC's epidemiological databases and found that there were 23 new portable bed rail-related incidents reported between April 1, 2010 and November 9, 2011. These incidents are reported to have occurred between 2009 and 2011. Four of the 23 incidents were fatal, and 19 were nonfatal incidents, 8 of which reported an injury. Among the 23 newly reported incidents that specified age (18 out of 23), three reported a child younger than 15 months old. The majority of the incidents (15 out of 18) reported the child's age to be between 15 months and 4 years.

Among the newly reported incidents, there were 4 fatalities. One resulted from a misinstalled bed rail, where the decedent was strangled by the straps of the reinforced anchor system. The second fatality occurred when the infant slipped through the torn section of the mesh and got caught when the bed rail flipped down and caught him at the neck. The remaining 2 fatalities lacked any information on the product or scenario-specific details.

Among the newly reported incidents, there were 19 nonfatal incidents resulting in 8 injuries. The 8 injuries sustained were mostly bumps and bruises; one case reported a laceration that was severe enough to require multiple stitches, and another reported a fractured collar-bone. None of the injuries required hospitalization. The hazard patterns identified among the 23 incident reports were similar to the hazard patterns identified in the data included in the proposed rule, including hinge-lock failure (8 incidents including 4 injuries and 1 fatality). The fatality was attributable, in part, to the hinge-lock failure of the bed rail and, in part, to the torn mesh panel). Other hazard patterns showed displacement of the bed rail (7 incidents, including 3 injuries, where the bed rail pushed out from underneath the mattress and created an opening between the mattress

and the rail); sharp surface (3 incidents, including 1 injury, due to sharp surfaces on the bed rail); misinstallation (1 strangulation fatality on the straps of the reinforced anchor system of the bed rail was reported to have been due to the improper misinstallation of the bed rail); and miscellaneous issues that included 4 incidents and 2 fatalities with insufficient information on the product or scenario and 2 non-fatal incidents (1 reporting hazards from broken screws and the other reporting design issues with the bed rail).

D. The ASTM Voluntary Standard

Section 104(b) of the CPSIA requires the Commission to assess the effectiveness of the voluntary standard in consultation with representatives of consumer groups, juvenile product manufacturers, and other experts. We have consulted with these groups regarding the ASTM voluntary standard, ''Standard Consumer Safety Specification for Portable Bed Rails,'' throughout its development. In response to the proposed rule, and in comments to the proposed rule, the ASTM Subcommittee on Portable Bed Rails, in collaboration with the CPSC staff, developed a new ASTM standard on portable bed rails, ASTM F2085–12, ''Standard Consumer Safety Specification for Portable Bed Rails,'' which incorporates many of the proposed modifications in the proposed rule, with a few clarifications and modifications that strengthen the standard. ASTM F2085–12 contains more stringent requirements than its predecessor, ASTM F2085–10a, and it would further reduce the risk of injury associated with portable bed rails.

E. Response to Comments on the Proposed Rule

The preamble to the proposed rule invited comments concerning all aspects of the proposed rule. We received 16 comments. Eight commenters stated general support for the proposed rule. Eight commenters raised specific issues that are addressed by topic below.

We describe and respond to the comments in section E of this document and also describe the final rule. To make it easier to identify the comments and our responses, the word ''Comment,'' in parentheses, will appear before the comment's description, and the word ''Response,'' in parentheses, will appear before our response. We also have numbered each comment to help distinguish between different comments. The number assigned to each comment is purely for organizational purposes and does not signify the comment's value or importance, or the order in which it was received.

1. Proposed Misassembly and Misinstallation Requirements

(*Comment 1*) One commenter questioned the need for a revised standard. Two commenters expressed concerns about the proposed requirements to address portable bed rail misassembly and misinstallation. The commenters stated that the proposed language is vague, arbitrary, and invites unacceptable variability in test conditions because there are too many possible misassembly options.

(*Response 1*) We believe that requirements are necessary to address the entrapment hazards that may result from the misassembly and misinstallation of portable bed rails based on our incident data. However, we agree that the proposed requirements of the proposed rule could be clarified and improved. After publication of the proposed rule, the ASTM Portable Bed Rail Subcommittee working group developed alternate performance requirements to address the commenters' concerns about testing and limited the misassembly possibilities to configurations most likely to present entrapment hazards. These requirements have been added to ASTM F2085–12, ''Standard Consumer Safety Specification for Portable Bed Rails,'' which improves upon the proposed test requirements in the proposed rule. In order to improve the misassembly requirements, ASTM F208–12 requires captive hardware to ensure that fasteners remain attached to their respective components before normal assembly and after normal disassembly. The addition of Figure 1 depicts types of captive hardware, including bolts that are free floating and that can retract but are not completely removable, as well as a pin that is retractable but is not removable without tools. Installation components are required to be fully assembled, inseparable, and permanently attached to a component requiring consumer assembly.

ASTM F2085–12 also addresses the issue regarding the potential for variability in misassembly test conditions. A significant difference between the proposed rule and ASTM F2085–12 is that there are no longer any test requirements or procedures to determine if a misassembled bed rail lacks sufficient vertical structure or provides sufficient visual cues that would notify a consumer that the bed rail is not assembled properly. Instead, the new standard focuses the testing on components that were identified in the incident data. The addition of figures and illustrations clarifies the pass and fail criteria of the requirements. Figure 5 in ASTM F2085–12 shows an example of a center horizontal structural component that is omitted; consequently, the bed rail's mesh fabric does not engage the center structural component. Figure 6 in ASTM F2085–12 shows additional examples of fail conditions, including a bed rail fabric with the bottom zipper misassembled,where the fabric cover can be zipped up without engaging the bottom horizontal bar. There also is an illustration of how the bottom bar can be omitted from insertion into the fabric sleeve or channel located at the base of the fabric component. Figure 7 in ASTM F2085–12 gives an example of a condition that is not to be tested; Figure 8 in ASTM F2085–12 gives an example of a tube that is inverted or interchanged; and Figure 9 shows an example of a test for unidirectional arm. Test personnel will conduct visual assessments of a bed rail after attempting to misassemble the bed rail. This will require some judgment to determine whether a bed rail can be misassembled using reasonable engineering judgment. We believe that the addition of such illustrations and figures will identify the misassembly combinations that actually would occur and that will prevent unnecessary testing of an unlimited variety of test configurations.

2. Foam and Inflatable (Nonrigid) Bed Rails

(*Comment 2*) Several commenters requested that inflatable and foam bed rails be included in the scope. A few commenters stated that these types of bed rails should meet all of the requirements in the standard and/or have requirements to address a potential suffocation hazard.

(*Response 2*) Nonrigid portable bed rails are included in the scope of ASTM F2085–12 and will need to meet the general requirements to address sharp edges or point, small parts, and permanency of labels, as well as requirements for a new warning label. However, the standard was developed for rigid portable bed rails, and many of the test requirements would not be applicable to these products. Although we are not imposing additional requirements at this time, we expect the ASTM Subcommittee on Portable Bed Rails to continue to monitor these types of nonrigid portable bed rails and pursue the development of additional requirements, as necessary.

3. Test Equipment: Mattress Platform and Sheeting Material

(*Comment 3*) One commenter stated that the specifications for the Mattress Test Platform 2 and the bed sheeting requirements in ASTM F2085–10a—*Section 7.1.2.1 (and 7.1.1.1 for sheeting) Mattress Construction* are too restrictive and difficult to obtain.

(*Response 3*) We agree that the Mattress Test Platform 2 and the bed sheeting specification in ASTM F2085–10a are unnecessarily restrictive. ASTM F2085–12 removes the Intention Load Deflection (''ILD'') test that is designed to test the firmness of a foam material and is relevant for Test Platform 1, which is a 4″-thick foam mattress. Test Platform 1 was selected to use on a thin and not very firm mattress. Test Platform 2 is an inner spring mattress, and thus, not solid foam. It was selected for use on a thick mattress (10–11″). However, there is no concern about the foam firmness of Test Platform 2 because the inner spring design gives the mattress rigidity. Therefore, there is no need to have an ILD requirement and test for Test Platform 2. In addition, there is no practical way to test the foam in an inner spring mattress to the ILD test. ASTM F2085–12 also allows greater flexibility for available bed sheet types for use in testing. The change in the sheet specifications was based on our finding that sheets that provide the weight-per-ounce were not practical. We believe that a 50/50 cotton-poly sheet over the mattress is a basic requirement for the test and that the range in thread count would not otherwise affect the results. Accordingly, ASTM F2085–12 allows greater flexibility for available mattress and bed sheet types for use in testing.

4. Double-Sided Bed Rails

(*Comment 4*) Several commenters recommended that portable bed rails be sold in sets of two (double-sided) only, to reduce entrapment between the wall and a piece of furniture.

(*Response 4*) Double-sided bed rails currently, are available to consumers. However, we believe that the potential for entrapment between the bed and the wall is not related to, or limited by, the use of a single-sided bed rail, and there is no evidence to support the assertion that requiring double-sided bed rails will address this hazard. We believe that consumers should continue to be educated regarding a safe sleep environment for children, including being aware of and eliminating hazards that are caused by gaps between a mattress and a wall.

5. Bed Sheet Changing

(*Comment 5*) One commenter stated that the proposed standard does not address issues such as daily changing of bed sheets or other routine use that can cause movement or stress on the components of a bed rail and lead to an unsafe product.

(*Response 5*) A review of the incident data did not indicate that changing of bedding or other routine behavior contributed to fatal or nonfatal incidents due to additional stress on the component parts of a bed rail. The standard contains requirements that test the strength of the bed rail. We believe that these requirements are adequate to address potential stress-related failures.

6. Mattress Systems

(*Comment 6)* One commenter stated that the rulemaking proceeding does not address the fact that portable bed rails can be used in various mattress systems.

(*Response 6*) Our review of portable bed rail products showed that most portable bed rails are adjustable to fit various size mattresses. ASTM F2085–12 contains test requirements that evaluate the safety of portable bed rails on test platforms intended to represent the different types of adult beds available in the market.

7. Warning Language

In general, all eight comments that addressed the warning requirements appear to support the general approach to improving the warning language that was in ASTM F2085–10a. However, some comments raised specific issues and suggested that additional revisions to these requirements would be helpful.

(*Comment 7*) Several commenters requested more specificity in the warning language. One commenter stated that warning labels should include age limits because bed rails should not be used with children younger than 2 years old. Another commenter noted the importance of describing the hazard more concisely than the warning in the current voluntary standard. One commenter stated that the proposed rule suggested that the revision to the entrapment hazard warning for critical installation components misleads consumers because it provides a false sense of security for those with children who can get in and out of an adult bed without help.

(Response 7) We agree that the primary bed rail warning label on the product and its retail packaging should include explicit age guidance and that the warning statements in the previous edition of the voluntary standard, ASTM F2085–10a, lacked this specificity. We believe that the new ASTM F2085–12 warning requirements address the public comments and are an improvement to the requirements in both the prior version of the voluntary standard and the proposed rule. The age at which children should not be using a bed rail has been made more explicit with the statement: ''NEVER use with children younger than 2 years old''; and the statement immediately following: ''Use ONLY with older children who can get in and out of adult bed without help,'' clarifies that children must meet both criteria. Additional revisions to the language, such as ''Gaps in and around bed rails have entrapped young children and killed infants'' clarify the mechanism by which children are dying or becoming injured.

The new warning requirements in ASTM F2085–12 also result in a more concise warning, which may increase the likelihood that consumers will take the time to read the warning and understand the information. For example, the proposed rule's warning requirements would result in a warning approximately 148 words long; whereas, the warning requirements in ASTM F2085–12 result in a much shorter warning of 102 words long. The revised warning language is now written at a slightly lower grade level than the proposed rule warning language, so that more people who read the warning may be more likely to understand it.

We disagree that the entrapment hazard warning for critical installation components misleads consumers. The purpose of the entrapment hazard warning is to alert consumers to the importance of installing the bed rail correctly. The statement in question—''Incorrect installation can allow the portable bed rail to move away from the mattress, which can lead to entrapment and death''—refers specifically to incorrect installation as the mechanism by which the bed rail can move away from the mattress. Nothing in the warning suggests that other mechanisms of entrapment exist that do not involve movement of the bed rail. Moreover, the bed rail itself includes a more comprehensive warning that discusses other sources of entrapment, such as the placement of the bed rail relative to the headboard or footboard of the adult bed, which clearly shows that other hazards and entrapment scenarios exist.

(*Comment 8*) One commenter stated that the warning labels should describe the materials used when producing the bed rails.

(*Response 8*) We disagree that the warning requirements should specify the materials used in the product.

Warnings are intended to be used only to identify a significant hazard. The commenter has not identified what materials present a hazard or what a warning requirement would address. The consequences of exposure to the hazard and appropriate avoidance behavior in response to the hazard also are key pieces of information that should be present in a warning, unless this information can be inferred readily. The commenter did not specify any of this information. Thus, including in a warning label a description of the materials used when the bed rail is produced is not appropriate at this time.

(*Comment 9*) Another commenter stated that there should be a strict warning about modification of the bed rail and the bed rail components.

(*Response 9*) We disagree that warning requirements should include provisions regarding modification of the bed rail and its components. We interpret this comment to indicate that the commenter seeks the addition of warning language to address the scenario of consumers intentionally altering the bed rail components. Our review of incident data does not support that consumers' intentional alteration of bed rail components leads to injury. Thus, mandating such warning language is not supported by the data.

8. Adult Bed Rails

(*Comment 10*) Two commenters stated that the scope of the rule should guarantee more stringent safety standards for all portable bed rails, including adult bed rails. These commenters note that bed rails are used routinely in nursing facilities, hospitals, and private homes. According to the commenters' data, between 1985 and 2009, the FDA received reports of 803 incidents of patients caught, trapped, entangled, or strangled in hospital beds, including 408 deaths, 138 non-fatal injuries, and 185 near-misses due to staff intervention. To address these types of incidents, the commenters requested that the Commission take action on adult bed rails, including mandating warning labels, enforcing reporting requirements, recalls, and civil penalties, and engaging in greater collaboration with the FDA.

(*Response 10*) Section 104(b) of the Consumer Product Safety Improvement Act requires the Commission to promulgate consumer product safety standards for durable infant or toddler products. Accordingly, this rulemaking is limited to bed rails intended for use with children (typically from 2 to 5 years of age) to keep them from falling out of an adult bed. Comments pertaining to other bed rail products intended for use by older children or adults are outside the scope of this proceeding. With respect to bed rails intended for use by adults or older children, we are aware that some bed rails may be considered ''devices'' under the Federal Food, Drug, and Cosmetic Act (''FDCA''); therefore, they are subject to regulation by the FDA. The FDA has several regulations pertaining to hospital beds, including a regulation for pediatric hospital beds (21 CFR 880.5140). The FDA regulations, in general, identify a hospital bed as having (among other things) movable and latchable side rails. However, the commenters raised important issues regarding incidents with bed rails that were not intended to be either a part of, or an accessory to, a hospital bed or FDA-regulated pediatric bed. To the extent that there may be such bed rails that are not regarded as medical devices regulated by the FDA, but that are considered, instead, to be ''consumer products'' under the CPSA or otherwise subject to our jurisdiction, we will continue to review this issue and consider what actions are appropriate, if any.

9. Shipment Costs and Product Size

(*Comment 11*) One commenter stated that shipping costs are a significant portion of the product's total cost and increasing the box size to contain a preassembled product could potentially increase the cost to ship the product by 50 percent. This commenter also stated that the proposed rule may result in adverse retail response to stocking bulkier packages on shelves or in inventory, or retailers dropping products, or refusing to accept a price increase, thus, placing the cost burden on manufacturers.

(*Response 11)* Not all products would need to be preassembled or put in larger boxes. Retooled and redesigned components may allow manufacturers to use existing boxes. To the extent that a manufacturer decides to preassemble parts, or the portable bed rail, we agree that preassembling portable bed rails may require larger boxes and that shipping larger boxes is likely to increase shipping costs. It is possible that the increased shipping costs could be significant for some small firms. We also agree that if larger boxes for bed rails were required, they would need additional storage and shelving space. As a result, some retailers might choose to decrease the number or type of bed rail models they offer to the public, which, in turn, could result in decrease in product demand for some manufacturers.

F. Summary of ASTM F2085–12, ''Standard Consumer Safety Specification for Portable Bed Rails''

When the Commission issued its proposed rule in April 2011, the Commission proposed incorporating by reference ASTM F2085–10a, *Standard Consumer Safety Specification for Portable Bed Rails,* with certain modifications, under a new 16 CFR part 1224, *Safety Specification for Portable Bed Rails.* The requirements for portable bed rails in ASTM F2085–12 incorporate many of the proposed changes in the proposed rule, with additional clarifications and improvements. Accordingly, 16 CFR part 1224 will incorporate by reference, without modification, ASTM F2085–12, which includes more stringent requirements that would further reduce the risk of injury associated with portable bed rails.

1. Scope

ASTM F2085–10a provided that under section 1, *Scope,* 1.1: ''This consumer safety specification establishes requirements for the performance of portable bed rails. It also contains requirements for labeling and instructional literature.''

The proposed rule would not make any change to section 1.1. However the preamble to the proposed rule made clear that the standard did not cover guardrails that fall under the scope of the ''Consumer Safety Specification for Toddler Beds'', ASTM F1821; or side rails that connect the headboard to the footboard; conversion rails that convert a crib to a full-size bed; and adult-size beds, on which the rail is permanently attached to the bed. 76 FR 19916. Accordingly, to make the scope of portable bed rails explicit so that it does not include such products, ASTM F2085–12 now provides under section 1.1: ''This consumer safety specification establishes requirements for the performance of portable bed rails. It also contains requirements for labeling and instructional literature. This consumer safety specification does not cover guardrails that fall under the scope of the Consumer Safety Specification for Toddler Beds, F1821 or guardrails that are designed for a specific model of bed and which attaches at the headboard or footboard.''

The proposed rule also would revise section 1.4 of ASTM F2085–10a to state: ''In addition to complying with section 1.4 of ASTM F2085–10a, comply with the following: (i) 1.4.1 Foam and inflatable bed rails need meet only the General Requirements of section 5, the performance requirement of 6.3.

Enclosed Openings, and the warning requirement of section 9.3.1.'' This section is addressed below in section 3, ''Terminology,'' and section 5, ''General Requirement.''

2. Referenced Documents

Consistent with the clarification in scope under section 1 (Scope)—that the new standard does not cover toddler beds—ASTM F2085–12 includes in section 2, (Referenced Documents) ASTM F1821, ''Consumer Safety Specification for Toddler Beds.'' In addition, ASTM F2085–12 includes Reference Document ASTM F1487, ''Consumer Safety Performance Specification for Playground Equipment for Public Use'' to specify the protusion gauge for entanglement used in the performance requirements.

3. Terminology

The proposed rule would revise the terminology in section 3 of ASTM F2085–10a, by creating the following new terms:

• 3.1.10 *foam bed rail, n*—portable bed rail constructed primarily of nonrigid materials such as fabric or foam.

• 3.1.11 *inflatable bed rail, n*—a portable bed rail constructed primarily of nonrigid material that requires air be inflated into the product to achieve structure.

• 3.1.12 *critical assembly component, n*—any component of the portable bed rail that requires consumer assembly in order to meet the performance requirements of 6.1 *Structural Integrity,* 6.3 *Enclosed Openings,* 6.4 *Openings Created by Portable Bed Rail Displacement of Adjacent Style Portable Bed Rails,* 6.5 *Openings Created by Displacement of Mattress-Top Portable Bed Rails and* 6.6 *Openings Created by Displacement of Portable Bed Rails Intended for Use on Specific Manufacturers' Beds.*

• 3.1.13 *critical installation component, n*—any component of the portable bed rail that is used to attach the portable bed rail onto the bed.

• 3.1.14 *misassembled/functional portable bed rail, n*—a portable bed rail that has been assembled incorrectly but appears to function as a portable bed rail. Misassembly/functionality is determined by meeting one of the criteria listed in 6.9.

In ASTM F2085–12 the following terminology and figures have been included in section 3:

• 3.1.4 *captive hardware,* n—fasteners that remain attached to their respective components before normal assembly and after normal disassembly (see Fig. 1).

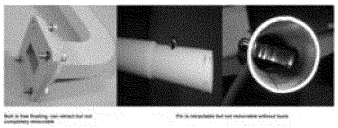

FIG. 1 Captive Hardware

• 3.1.6 *consumer adjustment,* n—those activities defined by the instructions to be taken by the consumer in order to properly fit and secure the bedrail to the mattress.

• 3.1.6.1 Discussion—Examples include sliding telescoping poles for proper fit, or initial adjustment for use, tightening of anchoring straps and positioning or changing of attachment components or locking pins.

• 3.1.7 *consumer assembly,* v—the fitting together of components of the bedrail according to manufacturer instructions.

• 3.1.8 *installation component,* n—component of the bed rail that is specifically designed to attach the bed rail to the bed and typically located under the mattress when in the manufacturer's recommended use position.

• 3.1.10 *misassembled bed rail,* n—a bed rail that has been assembled incorrectly but appears to function as a bedrail.

• 3.1.12 *non-rigid bed rail,* n—portable bed rail constructed of non-rigid materials, including but not limited to fabric or foam, or that requires air be inflated into the product to achieve structure.

The new standard, ASTM F2085–12, contains some, but not all, of the proposed terminology. Proposed sections 3.1.10, *foam bed rail,* and 3.1.11, *inflatable bed rail,* are terms that are now incorporated as *non-rigid bed rail* under new section 3.1.12 in ASTM F2085–12. ASTM F2085–12 does not add proposed section 3.1.12, *critical assembly component,* because all of the bed rail components are critical to safety. Proposed section 3.1.13, *critical installation component,* has been modified to make clear the purpose of the *installation component* under new section 3.1.8 in ASTM F2085–12. Proposed section 3.1.14, *misassembled/functional portable bed rail,* also has been modified to make clear under new section 3.1.10 in ASTM F2085–12 what is meant by *misassembled bed rail.* ASTM F2085–12 also adds additional terms for *captive hardware* under new section 3.1.4, *consumer assembly* under new section 3.1.7, *consumer adjustment* under new section 3.1.6, and new section 3.1.6.1 *Discussion.* These new sections create terminology to help testing laboratories differentiate between components that require consumer adjustment, such as straps and telescoping rods, and components that are fitted or fastened together for the bed rails' structure, and components that do not require consumer adjustment.

The basis for the new terminology is explained further under section 5 (General Requirements), section 6 (Performance Requirements), section 7 (Test Equipment), section 8 (Test Methods), section 9 (Marking and Labeling), and section 11 (Instructional Literature).

4. Calibration and Standardization

The proposed rule would not make any changes to section 4 of ASTM F2085–10a (Calibration and Standardization). This section is unchanged in ASTM F2085–12.

5. General Requirements

The proposed rule would add a section 1.4.1 stating, ''1.4.1 *Foam and inflatable bed rails* need meet only the General Requirements of section 5, the performance requirement of 6.3 *Enclosed Openings,* and the warning requirement of section 9.3.1.''

New section 5.5 of ASTM F2085–12 provides that ''Non-rigid bed rails need only meet the general requirements of Section 5, the performance requirement of 6.3, and the warning requirements of 9.3.'' This section provides that both foam and inflatable bed rails are covered under the term ''non-rigid'' but are not limited to foam and inflatable products that are also used as bed rails.

In addition, the proposed rule would add the following sections to ASTM F2085–10a:

• 5.6 *Critical Installation Components* that are also *critical assembly* components and that meet the definition of a misassembled/functional portable bed rail must meet 5.6.1 or 5.6.2.

• 5.6.1 Critical installation components must be permanently affixed to a structural component(s) of the portable bed rail.

• 5.6.2 If a critical installation component(s) is also a critical assembly component and may result in a misassembled/functional portable bed rail, the portable bed rail must meet 6.10.1.

ASTM F2085–12 provides similar, but modified, language under new section 5.7 and section 5.8.

• 5.7 Installation components that are required to meet the performance requirements of 6.4, 6.5, and 6.6 shall be fully assembled, inseparable, and permanently attached to a component requiring consumer assembly (this excludes any consumer adjustment).

• 5.8 For products requiring consumer assembly, supplied hardware used for assembly of the bed rail such as screws, nuts or bolts shall be captive hardware to their respective components.

The proposed rule's critical installation components would prevent components (such as anchor plates and straps) that are used to attach the bed rail to the bed from being discarded or lost. All installation component(s) would be attached permanently to a structural component(s) of the bed rail. ASTM F2085–12 combines 5.6, 5.6.1, and 5.6.2 of the proposed rule into new section 5.7 and section 5.8. Like the proposed rule, these sections in ASTM F2085–12 require all installation components to be permanently attached to a structural component(s) that is required to make up the bed rail. This prevents installation components from being discarded or lost. The wording in ASTM F2085–12 clarifies the difference between installation components will require consumer adjustment and those components are part of consumer assembly. Test personnel will be able to identify components subject to the misinstallation requirement and it addresses the concern raised by commenters about the ambiguity of test requirements for installation components that are adjustable.

6. Performance Requirements

The proposed rule would add the following sections to ASTM F2085–10a:

• 6.9 *Determining Misassembled/Functional Portable Bed Rail*—a portable bed rail must be considered a misassembled/functional portable bed rail if it meets one of the criteria in 6.9.1, 6.9.2, 6.9.3, or 6.9.4.

• 6.9.1 The portable bed rail can be assembled without any critical assembly component.

• 6.9.2 The portable bed rail can be assembled without the supplied fasteners, such as screws, nuts, or bolts that are not captive to a critical assembly component such as the frame.

• 6.9.3 The portable bed rail's fabric cover or mesh can be placed over the rigid frame structure without engaging parts of the frame as intended in final assembly.

• 6.9.4 The portable bed rail can be assembled by improper placement of any critical assembly component, such as an inverted or an interchanged part, without permanent deformation or breakage.

• 6.10 *Determining Acceptability of Misassembled/Functional Portable Bed Rail*—Misassembled/Functional Portable Bed Rails must meet 6.10.1, 6.10.2, 6.10.3 or 6.10.4.

• 6.10.1 The portable bed rail must not remain upright or the vertical height must decrease by 6 inches at any point along the top rail when tested to 8.7.

• 6.10.2 The fabric cover or mesh must have a permanent sag a minimum of 3 inches after tested in accordance with 8.8.

• 6.10.3 The fabric cover will not fit over the frame without tearing.

• 6.10.4 Mating parts must clearly show misassembly by two parts overlapping and creating a minimum of a ½-inch protrusion out of the plane of the rail. Under ASTM F2085–12, the following new sections and figures have been added:

• 6.9 Bed rail components requiring consumer assembly shall not be able to be misassembled when evaluated to 6.9.1.

• 6.9.1 *Determining Misassembled Bed Rail*—A bed rail shall be considered a misassembled bed rail if it appears to be a functional bed rail under any one of the conditions listed in 6.9.1.1, 6.9.1.2, or 6.9.1.3 and it does not meet the requirements of 6.4, 6.5, or 6.6.

• 6.9.1.1 The bed rail's fabric cover or mesh can be placed over the rigid frame structure without engaging all structural components of the frame as intended in final assembly (Fig. 5 and Fig. 6). When the bed rail is evaluated, zippers and other means of attachment should be fully fastened. If possible to fasten the means of attachments without engaging said structural components, evaluation for misassembly should account for that (see Fig. 6).

• **Note 1**—Any means of attachment, including, but not limited to, zippers, hooks and loops, and snaps, should be fully fastened. Fig. 7 represents a passing condition.

• 6.9.1.2 The bed rail can be consumer assembled with any horizontal structural components improperly positioned such as being inverted or interchanged, without permanent deformation or breakage of the component or bed rail. This excludes consumer adjustment or universal components that are designed to be interchangeable (Fig. 8). For example:

(1) Horizontal structural components shall be interchanged (Components 1, 2, 3).

(2) Horizontal structural components shall be inverted (AB:BA); (CD:DC); (EF:FE).

• 6.9.1.3 Bed rails where the position of the arms are intended to be unidirectional are able to be assembled when the arms are rotated 180 degrees above the vertical axis (Fig. 9).

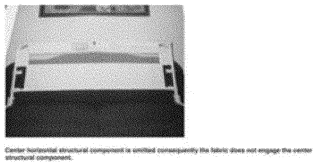

FIG. 5 Example of Fail Condition

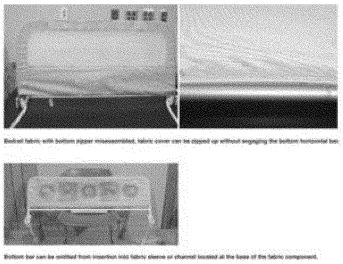

FIG. 6 Examples of Fail Conditions

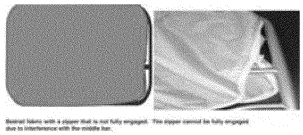

FIG. 7 Example of Condition Not To Be Tested

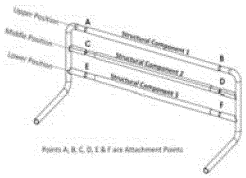

FIG. 8 Example of Tube Inverted or Interchanged

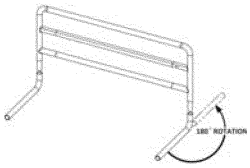

FIG. 9 Example of Test for Unidirectional Arm

The proposed rule contained performance requirements that did not exist in ASTM F2085–10a and were intended to address the risk of entrapment hazards associated with consumer misassembly of portable bed rails. The proposed rule contained test methods and performance criteria to determine if a misassembled bed rail provided sufficient visual cues for a consumer to identify that the bed rail was misassembled. If the misassembled bed rail did not stay upright, or the top rail collapsed after testing, the misassembly was considered to have a sufficient visual cue for the consumer to recognize that the product was not assembled correctly. This condition would be considered a passing result because the bed rail only could be misassembled in a way that was obvious to the consumer. Bed rails that are preassembled or designed to reduce the potential for consumer misassembly,

without deforming or breaking parts, also would meet these requirements. CPSC staff developed two prototype bed rails to demonstrate that products could be redesigned to meet the proposed requirement.

ASTM F2085–12 provides a means for determining misassembled portable bed rails that is similar to the proposed rule, but targets specific misassembled portable bed rail scenarios, such as missing horizontal components, fastening the fabric mesh without engaging a horizontal bar, and assembling parts to the wrong components or inverted components.

ASTM F2085–12 addresses misassembly by identifying criteria similar to the proposed rule, but it contains additional figures and illustrations showing examples of passing and failing bed rails that have been misassembled. ASTM F2085–12 section 5.8 is equivalent to section 6.9.2 of the proposed rule, and it requires that nuts and bolts be attached to the bed rail structure to prevent the consumer from discarding or misplacing the fasteners. ASTM F2085–12 section 6.9.1.1 is equivalent to sections 6.9.3 and 6.9.4 of the proposed rule. These requirements identify a misassembled bed rail as a bed rail that can be assembled without a part or without the fabric engaging the entire frame as intended by the manufacturer. These requirements directly address the fatal incidents where the horizontal bar was not used or where the fabric was not installed properly over the bottom horizontal bar. ASTM F2085–12 sections 6.9.1.2 and 6.9.1.3 are equivalent to section 6.9.4 of the proposed rule and require that bed rail components not be interchanged or inverted. This prevents the consumer from assembling a component in a backward or upside-down position.

The primary difference between ASTM F2085–12 and the proposed rule is that ASTM F2085–12 does not have a physical test that establishes pass and fail criteria to determine whether a misassembled bed rail appears to be functional as proposed in section 6.10.1 of the proposed rule. Determination of whether a misassembled bed rail appears to be functional (failing the standard) or appears *not* to be functional (passing the standard) is up to the judgment of the testing laboratory. The figures that show examples of passing and failing bed rails will provide guidance to testing laboratories in making the determination. The new requirements reduce the potential for numerous test configurations, eliminate the testing of zippered products for sag variability, reduce the possibility of misassembly of adjustable components for installation, and improve repeatability of testing between labs.

7. Test Equipment

The proposed rule did not suggest any changes to the test platforms in ASTM F2085–10a. However, we received comments to the proposed rule that the specifications for the Mattress Test Platform and the bed sheeting requirements in ASTM F2085–10a under *Section 7.1.1.1 and 7.1.1.2* are too restrictive. In response to the comments, ASTM F2085–12 modifies the language to make it easier to test the mattresses and sheeting.

ASTM F2085–10a provided under section 7. Test Equipment, 7.1.1 *Test Platform* 1, 7.1.1.1 *Mattress Construction:*

• The mattress shall be of standard twin size, 38 by 74.5 in. 6 0.5 in. (0.97 by 1.89 m + 13 mm). The mattress shall be made from open cell polyurethane foam padding and be 4 to 5 in. (102 to 127 mm) thick with a density of 1 lb/ft3 +0.2, −0 (16 kg/m3 +3.2, −0). The mattress shall weigh between 6.0 and 9.5 lb (2.7 to 4.3 kg). There shall be no surface texture features (for example, quilting) on the test mattress. The mattress shall be covered with a standard twin sized fitted sheet. The sheet shall be white, 50/50 cotton/polyester blend. It shall have 180 threads per square inch and fabric weight of approximately 3.5 oz/yd2 (161 g/m2). The sheet shall be laundered once before use in an automatic home washer, using hot water setting and longest normal cycle with the manufacturer's recommended quantity of a commercial detergent, and dried in an automatic home tumble dryer.

ASTM F2085–12 provides under new section 7:

• 7. Test Equipment, 7.1.1 *Test Platform 1,* 7.1.1.1 *Mattress Construction*—The mattress shall be of standard twin size, 38 by 74.5 in. ± 0.5 in. (0.97 by 1.89 m ± 13 mm). The mattress shall be made from open cell polyurethane foam padding and be 4 to 5 in. (102 to 127 mm) thick with a density of 1 lb/ft3 +0.2, −0 (16 kg/m3 +3.2, −0). The mattress shall weigh between 6.0 and 9.5 lb (2.7 to 4.3 kg). There shall be no surface texture features (for example, quilting) on the test mattress. The mattress shall be covered with a standard twin sized fitted sheet. The sheet shall be white, 50/50 cotton/polyester blend. It shall have 100 to 300 threads per square inch.

ASTM F2085–10a provided under section 7. Test Equipment, 7.1.2 *Test Platform 2,* 7.1.2.1 *Mattress Construction:*

• The mattress shall be of standard twin size, 38 in. by 74.5 in. ± 0.5 in. (0.97 m by 1.89m ± 13 mm). The mattress shall be of an innerspring design and be between 10.0 in. (0.25 m) and 11.0 in. (0.28 m) thick. The mattress shall weigh 50 ± 10 lb (22.7 ± 4.5 kg). The mattress shall be covered with a standard twin sized cotton fitted sheet. The sheet shall be white, 50/50 cotton/polyester blend. It shall have 180 threads per square inch and fabric weight of approximately 3.5 oz/yd2 (161 g/m2). The sheet shall be laundered once before use in an automatic home washer using hot water setting and longest normal cycle with the manufacturer's recommended quantity of a commercial detergent, and dried in an automatic home tumble dryer.

ASTM F2085–12 provides that under new section 7.1.2. *Test Platform* 2:

• 7.1.2.1 *Mattress Construction*—The mattress shall be of standard twin size, 38 in. by 74.5 in. ± 0.5 in. (0.97 m by 1.89m ± 13 mm). The mattress shall be of an innerspring design and be between 10.0 in. (0.25 m) and 11.0 in. (0.28 m) thick. The mattress shall weigh 50 ± 10 lb (22.7 ± 4.5 kg). The mattress shall be covered with a standard twin sized cotton fitted sheet. The sheet shall be white, 50/50 cotton/polyester blend. It shall have 100 to 300 threads per square inch.

ASTM F2085–12 also deletes section 7.1.2.2 of ASTM F2085–10a, which provides:

• 7.1.2.2 *Mattress Performance*—The foam shall have an Indentation Load Deflection (ILD) of between 28 and 33 when tested in accordance with Test Methods D3574, Method B1.

In response to comments to the proposed rule that asserted that the specifications for the mattress platform and sheeting material were unduly restrictive (Comment 3 and Response 3), ASTM F2085–12 removed the Intention Load Deflection (''ILD'') test that is designed to test the firmness of a foam material because it was not appropriate for a rigid mattress under Test Platform 2. In addition, we agreed that purchasing sheets that provide the weight per ounce is not practical and that the range in thread count would not otherwise affect the results. Accordingly, we believe that the new requirements are an improvement over the existing standard.

The proposed rule would add the following section to ASTM F2085–10a on the force gauge:

• 7.6 *Force Gauge*—gauge must have a minimum range of 0 to 50 lb (222N) with a maximum tolerance of ± 0.25 lb (1.11N) to clarify the manner

in which the force will be applied under the proposed test method to determine acceptability of vertical structure of a misassembled/functional portable bed rail.

ASTM F2085–12 does not have a test to determine acceptability of the vertical structure of a misassembled/functional portable bed rail. Accordingly, under the new section, reference to the vertical structure of a misassembled/functional portable bed rail is omitted. However, because the force gauge is used for other tests in the standard, section 7.6 of ASTM F2085–12 states:

• 7.6 *Force Gauge*—gauge must have a minimum range of 0 to 50 lb (222N) with a maximum tolerance of ± 0.25 lb (1.11N).

8. Test Methods

The proposed rule would add the following sections to ASTM F–2085–10a:

• 8.7 *Test Method for Determining Acceptability of Vertical Structure of a Misassembled/Functional Portable Bed Rail:*

• 8.7.1 If possible, attempt to assemble the bed rail in a misassembled configuration(s), as defined in 6.9 *Determining Misassembled/Functional Portable Bed Rail:*

• 8.7.2 Firmly secure the misassembled portable bed rail on a table top or other stationary flat surface, using clamps. The clamps should be located 4 to 6 inches from the intersection of the portable bed rail legs to the vertical plane (see figure 8).

• 8.7.3 Gradually apply a force of 10 lbs, using a ½-inch disc to the uppermost horizontal component of the rail in a downward direction at a location along the horizontal component that would most likely vertically deform the bed rail (see figure 8). Apply the force over a period of 5 seconds; hold the force for 10 seconds, and release.

• 8.7.4 Repeat 8.7.1 through 8.7.3 for all misassembly configurations discovered in 6.9.

• 8.8 *Test Method for Determining Fabric Sag Acceptability of a Misassembled/Functional Portable Bed Rail:*

• 8.8.1 If possible, attempt to assemble the bed rail in a misassembled configuration(s), as defined in 6.9 *Determining Misassembled/Functional Portable Bed Rail.*

• 8.8.2 Gradually apply a force of 1 lb, using a ½-inch disc on the fabric/mesh in any direction or location along the fabric/mesh that is most likely to cause it to come off of the frame (see Figure 8). Apply the force over a period of 5 seconds, hold for an additional 10 seconds, and release.

• 8.8.3 Repeat 8.8.1 through 8.8.2 for all misassembly configurations discovered in 6.9.

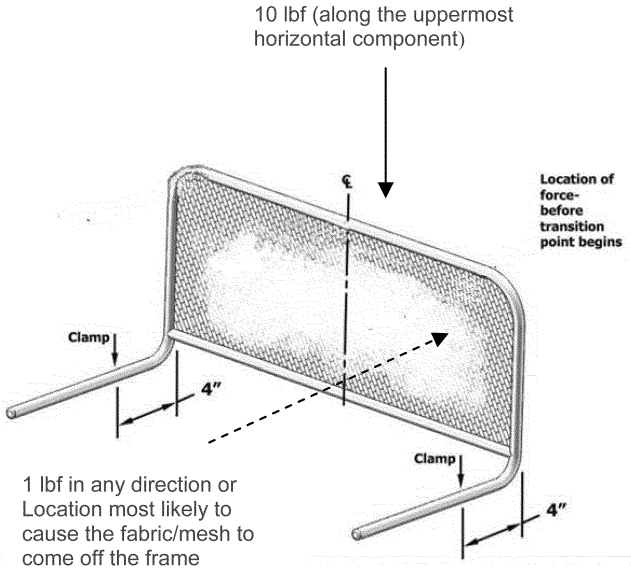

Figure 8: Determining misassembly/functional bed rail test setup

Section 6 in ASTM F2085–12 establishes requirements for determining misassembled portable bed rails, by targeting specific misassembled portable bed rail scenarios, such as missing horizontal components, fastening the fabric mesh without engaging a horizontal bar, and assembling parts to the wrong components or inverted components. ASTM F2085–12 does not have a test to determine acceptability of the vertical structure of a misassembled/functional portable bed rail. The testing laboratories are in the best position to determine whether a misassembled bed rail appears to be functional (failing the standard) or appears *not* to be functional (passing the standard). Accordingly, we believe that the new requirements under sections 5 (General Requirements) and 6 (Performance Requirements) are an improvement over the proposed rule's test requirements; accordingly, our proposed requirements in section 8 are not necessary.

9. Marking and Labeling

The proposed rule would make the following revisions to section 9, Marking and Labeling of ASTM F085–10a:

• 9.3.1.1 ⚠ **WARNING**: Suffocation and Strangulation Hazard.

• 9.3.1.3 Children who cannot get in and out of an adult bed without help can be trapped between a mattress and a wall and suffocate. NEVER place children younger than 2 years old in adult beds with or without a portable bed rail.

• 9.4 Critical installation components must be labeled with the entrapment hazard warning in 9.4.1. The entrapment hazard warning must be in contrasting colors, permanent, conspicuous, and sans serif-style font. In the entrapment hazard warning statement the safety alert symbol "⚠" and the words "WARNING - ENTRAPMENT HAZARD" must not be less than 0.20 in. (5 mm) high. The remainder of the text must be characters whose upper case must be at least 0.10 in. (2.5 mm) high.

• 9.4.1. The warning must including [sic] the following, exactly as stated below:

WARNING – ENTRAPMENT HAZARD

⚠ NEVER use portable bed rail without installing this part onto bed. Incorrect installation can allow bed rail to move away from mattress, which can lead to entrapment and death.

ASTM F2085–12 adopts some of the requirements in the proposed rule, but clarifies the warning label. The new provisions state:

• 9.3.1 The warning statements shall include the following wording, exactly as stated below:

⚠WARNING

SUFFOCATION AND STRANGULATION HAZARD

Gaps in and around bed rails have entrapped young children and killed infants.

NEVER use with children younger than 2 years old. Use ONLY with older children who can get in and out of adult bed without help. NEVER use in place of crib.

NEVER use unless bed rail is tight against mattress, without gaps, and at least 9 inches from headboard and footboard. Do not fill gaps with pillows, blankets, or other items that can suffocate children.

NEVER use on toddler bed, bunk bed, water bed, or bed with inflatable mattress. Use ONLY on adult bed.

• 9.3.2 For manufacturers' specific bed rails, the warning statements shall also address the following:

Use only on (*manufacturer insert applicable bed and mattress/platform information*).

• 9.4 At least one installation component must be labeled with the entrapment hazard warning in 9.4.1. The entrapment hazard warning shall be in contrasting colors, permanent, conspicuous, and sans serif style font. In the entrapment hazard warning statement the safety alert symbol "⚠" and the words "WARNING – ENTRAPMENT HAZARD" shall not be less than 0.20 in. (5 mm) high. The remainder of the text shall be characters whose upper case shall be at least 0.10 in. (2.5 mm) high.

• 9.4.1 The following warning shall be addressed:

⚠WARNING – ENTRAPMENT HAZARD

NEVER use bed rail without properly securing bed rail to bed. Incorrect installation can allow bed rail to move away from mattress, which can lead to entrapment and death.

Note 2—Addressed means that verbiage other than what is shown can be used as long as the intent is the same or information that is product-specific is presented.

We believe that the new ASTM F2085–12 warning requirements address the comments received on the proposed rule and improve the requirements in the prior version of the voluntary standard and the proposed rule. The age at which children should not be using a portable bed rail has been made explicit with the statement: ''NEVER use with children younger than 2 years old.'' Also, the statement immediately following that: ''Use ONLY with older children who can get in and out of adult bed without help,'' clarifies that children must meet both criteria: They must be at least 2 years old, and they must be able to get in and out of an adult bed without help. Additional revisions to the language, such as the statement: ''Gaps in and around bed rails have entrapped young children and killed infants,'' clarifies for consumers the mechanism by which children are dying or becoming injured.

The new warning requirements in ASTM F2085–12 also result in a considerably more concise warning, which may increase the likelihood that consumers will take the time to read the warning and encode the information. For example, the proposed rule's warning requirements would have resulted in a warning approximately 148 words long; whereas, the warning requirements in ASTM F2085–12 result in a warning that is 102 words long. The revised warning language also is written at a slightly lower grade level than the proposed rule warning language, and people who read the warning may be more likely to understand it.

10. Permanency of Label and Warnings

The proposed rule would not make any change to section 10 of ASTM F2085–10a ''Permanency of Label and Warnings.'' This section is unchanged in ASTM F2085–12.

11. Instructional Literature

We proposed to revise section 11.1 of ASTM F2085–10a to state:

• 11.1 Instructions must be provided with the portable bed rail and must be easy to read and understand. Assembly, installation, maintenance, cleaning, operating, and adjustment instructions and warnings, where applicable, must be included.

ASTM F2085–12 incorporates this provision but adds clarifying language in section 11.1.1. ASTM F2085–10a provided that:

• 11.1.1 The instructions shall contain the warning statements, required by 9.3.1 in the exact format, and shall address the statements in 9.3.2. In addition, instructions shall address the following: Discontinue use if damaged, broken or if parts are missing. ASTM 2085–12 section 11.1.1. now states:

• 11.1.1 The instructions shall contain the warning statements, required by 9.3.1 in the exact format, and where applicable, shall address the statement in 9.3.2. In addition, instructions shall address the following:

• 11.1.1.1 Discontinue use if damaged, broken, or if parts are missing.

The revised requirement helps clarify that the instructions are appropriate for manufacturers' specific bed rails, including the manufacturer's applicable bed and mattress/platform information that was revised in section 7 (Test Equipment).

12. Keywords

The proposed rule would not change section 12 of ASTM F2085–10a ''Keywords.'' This section is unchanged in ASTM F2085–12.

13. Conforming Edits

ASTM F2085–12 provides conforming edits, including renumbering the figures to incorporate the addition of figures in section 3 (Terminology), and section 6 (Performance Requirements). ASTM F2085–12 also provides additional rationale for the changes in its appendix. The appendix is nonmandatory information and may be viewed in the ASTM F2085–12 standard under ''Appendix (Nonmandatory Information); XI. Rationale.''

14. Additional Change to the Final Rule

On our own initiative, we revised § 1224.1, ''Scope, application, and effective date,'' by replacing ''This part 1224 establishes * * *'' with ''This part establishes * * *.'' This is a non-substantive change intended to simplify the sentence structure in § 1224.1.

G. Effective Date

The Administrative Procedure Act (''APA'') generally requires that the effective date of a rule be a least 30 days after publication of the final rule. 5 U.S.C. 553(d). The preamble to the proposed rule indicated that the standard would become effective 6 months after publication of a final rule. We sought comment on how long it would take manufacturers of portable bed rails to come into compliance with the rule. One commenter stated that 6 months allowed for too much delay of administrative enforcement of the new requirements. One commenter stated that if a CPSC mandatory regulation differed from the ASTM standard, a minimum of 1 year is appropriate to allow adequate time for manufacturers to bring products into compliance with the new requirements. Because ASTM has published a new standard that was approved as of January 1, 2012, and because the final rule adopts the new standard as a CPSC mandatory regulation, we believe 6 months is an adequate length of time for manufacturers to comply with the new requirements. We believe that manufacturers would benefit from the additional 6 months after publication of a final rule to review the new requirements thoroughly and to ensure that new portable bed rails manufactured or imported after that date are in compliance with the new requirements, including the fabrication of new labels, as well as the retooling and redesign of products. Accordingly, the final rule provides that the rule will be effective 6 months after publication of the final rule in the **Federal Register.** A 6 month effective date should also enable the Commission to complete the required rulemaking with regard to the notice of requirements regarding the accreditation of laboratories to conduct the requisite third party testing to this new portable bed rails standard.

H. Regulatory Flexibility Act

1. Introduction

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires that final rules be reviewed for their potential economic impact on small entities, including small businesses. Section 604 of the RFA requires that CPSC staff prepare a final regulatory flexibility analysis when the Commission promulgates a final rule. The final regulatory flexibility analysis must describe the impact of the rule on small entities and identify any alternatives that may reduce the impact. Specifically, the final regulatory flexibility analysis must contain:

1. A succinct statement of the objectives of, and legal basis for, the rule;
2. A summary of the significant issues raised by public comments in response to the initial regulatory flexibility analysis; a summary of the assessment of the agency of such issues; and a statement of any changes made in the proposed rule as a result of such comments;
3. A description of, and where feasible, an estimate of, the number of small entities to which the rule will apply;
4. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities

subject to the requirements, and the type of professional skills necessary for the preparation of reports or records; and

5. A description of the steps the agency has taken to reduce the significant economic impact on small entities, consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the rule, and why each one of the other significant alternatives to the rule considered by the agency, which affect the impact on small entities, was rejected.

2. The Market

Typically, portable bed rails are produced and/or marketed by juvenile product manufacturers and distributors or by furniture manufacturers and distributors. When the proposed rule was published, we were aware of 14 manufacturers or importers supplying bed rails to the U.S. market. We are now aware of at least 17 known manufacturers or importers supplying bed rails to the U.S. market. Thirteen are domestic manufacturers (76 percent), and three are domestic importers (17 percent). The remaining firm has an unknown supply source, and there is no publically available information regarding its size.

Under U.S. Small Business Administration (''SBA'') guidelines, a manufacturer of portable bed rails is small if it has 500 or fewer employees; an importer is considered small if it has 100 or fewer employees. Based on these guidelines, 12 of the domestic manufacturers and three of the domestic importers known to be supplying portable bed rails to the U.S. market are small. There may be additional unknown small manufacturers and importers operating in the U.S. market as well.

The Juvenile Products Manufacturers Association (''JPMA''), the major U.S. trade association that represents juvenile product manufacturers and importers, runs a voluntary Certification Program for several juvenile products. Five manufacturers supply bed rails to the U.S. market that are compliant with the ASTM standard F2085–10a (the previous voluntary standard). Among them, four are JPMA-certified as compliant with ASTM F2085–10a, and one firm claims compliance. Of the three importers, one firm is JPMA-certified as ASTM compliant with ASTM F2085–10a, and one firm claims to be in compliance. All seven firms, which are either JPMA-certified or claim compliance with ASTM F2085–10a, are small. However, none of these firms meets the requirements of the current voluntary standard, ASTM F2085–12.

JPMA estimates that current annual sales of portable bed rails are approximately 750,000 units, and retail sales are approximately $20 million. No information is available about the average product life of bed rails; but if, for example, bed rail sales are assumed to have remained constant in recent years, and bed rails remain in use for 3 to 5 years, then currently, there might be 2.25 million to 3.75 million bed rails in use. National estimates of bed rail product-related injuries are not available because the National Electronic Injury Surveillance System (''NEISS'') data do not allow for clear identification of youth bed rails. Therefore, the risk of injury associated with the number of products in use cannot be calculated.

3. Impact of the Standard on Small Business

There are 17 firms currently known to be producing or selling portable bed rails in the United States. Of these firms, 12 are small domestic manufacturers, and three are small domestic importers. The remainder of this analysis focuses on these 15 small domestic firms.

Small Domestic Manufacturers

The impact of the draft final rule on small manufacturers may differ, based on whether they compliant with the preceding ASTM standard, ASTM F2085–10a. Of the 12 domestic manufacturers, five produce portable bed rails that are certified as compliant by JPMA or claim to be in compliance with ASTM F2085–10a.

The products of the firms that are not in compliance with ASTM F2085–10a may require substantial modifications to meet ASTM F2085–12. The costs associated with these modifications could include product redesign, development and marketing staff time, product testing, and focus group expenses. It is possible that some firms may change the type of materials used to make portable bed rails, resulting in some cost increase. Costs may also rise if additional materials are required, or the products need to be redesigned. The actual costs of product modifications are unknown, but they could be significant for some firms. However, the impact of these costs may be mitigated if they are treated as new product expenses and amortized.

The impact on the firms that produce portable bed rails that are compliant with ASTM F2085–10a may be less significant. Firms already in compliance with ASTM F2085–10a may require fewer modifications in order to bring their product into compliance with the current voluntary standard. Some firms may opt to preassemble component(s) rather than redesign their product. If firms decide to preassemble products, then portable bed rails may require larger shipping boxes. Shipping larger boxes is likely to increase shipping costs, and increased shipping costs may be significant in some cases. Larger boxes will also require greater storage space and may cause some retailers to reduce portable bed rails from their shelves and inventories.

All manufacturers will need to modify existing warning labels. Costs associated with the new warning label would be low because no new materials are used. However, eliminating the specified test methods in the proposed rule and reducing the number of testing configurations as well as reducing the number of warnings may result in a small reduction in costs. At least four small manufacturers' product lines consist primarily or entirely of nonrigid portable bed rails. These firms may need to alter the warning label and requirements for enclosed openings; but otherwise, these firms are not likely to be affected significantly by the voluntary standard.

Additionally, once the final rule and the notice of requirements is in effect, all manufacturers will be subject to the additional costs associated with the third party testing and certification requirements.

Small Domestic Importers

All three small domestic importers would need to find an alternate source of portable bed rails if their existing supplier does not come into compliance with the current voluntary standard. The cost to importers may increase and in turn, they may pass on some of those increased costs to consumers. Some importers may respond to the rule by discontinuing the import of their portable bed rails. However, the impact of such a decision may be lessened by replacing the noncompliant portable bed rail with a complying product or another juvenile product. Deciding to import an alternative product would be a reasonable and realistic way for most importers to offset any lost revenue, given that most import a variety of products. However, for small importers whose product lines rely largely on bed rails, substituting another product may not be realistic. The impact on these small importers likely would be more significant.

As is the case with manufacturers, all importers will be subject to third party testing and certification requirements, and consequently, will experience additional costs.

4. Alternatives

Section 104 of the CPSIA requires the Commission to adopt a mandatory standard substantially the same as, or more stringent than, the voluntary standard, if the Commission determines that more stringent standards would further reduce the risk of injury associated with such products. One alternative would be to set an effective date later than the staff-recommended 6 months. This would allow suppliers (and manufacturers) additional time to modify and/or develop compliant portable bed rails, thereby spreading the associated costs over a longer period of time.

I. Environmental Considerations

The Commission's regulations provide a categorical exclusion for the Commission's rules from any requirement to prepare an environmental assessment or an environmental impact statement because they ''have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

J. Paperwork Reduction Act

This rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The preamble to the proposed rule (76 FR 19922 through 19923) discussed the information collection burden of the proposed rule and specifically requested comments on the accuracy of our estimates. OMB has assigned control number 3041–0149 to this information collection. We did not receive any comment regarding the information collection burden of the proposal. However, the final rule makes modifications regarding the information collection burden because the number of estimated manufacturers subject to the information collection burden is now estimated at 17 manufacturers rather than the 14 manufacturers initially estimated in the proposed rule.

Accordingly, the estimated burden of this collection of information is modified as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

16 CFR Section	Number of respondents	Frequency of responses	Total annual responses	Hours per response	Total burden hours
1224.2(a)	17	2	34	1	34

There are no capital costs or operating and maintenance costs associated with this collection of information.

There are 17 known firms that supply portable bed rails to the U.S. market. All 17 firms are assumed to use labels on their products and their packaging, but they would need to make some modifications to their existing labels. The estimated time required to make these modifications is about 1 hour per model. Each firm supplies an average of two different models of portable bed rails; therefore, the estimated burden hours associated with labels is: 1 hour × 17 firms × 2 models per firm = 34 annual hours. We estimate that the hourly compensation for the time required to create and update labels is $28.36 (Bureau of Labor Statistics, September 2011, all workers, goods-producing industries, sales, and office, Table 9). Therefore, the estimated annual cost to industry associated with the Commission-recommended labeling requirements is $964 ($28.36 per hour × 34 hours = $964.24, which we have rounded down to $964).

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted the information collection requirements of this final rule to the OMB.

K. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a ''consumer product safety standard under [the CPSA]'' is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA refers to the rules to be issued under that section as ''consumer product safety rules,'' thus, implying that the preemptive effect of section 26(a) of the CPSA would apply. Therefore, a rule issued under section 104 of the CPSIA will invoke the preemptive effect of section 26(a) of the CPSA when it becomes effective.

L. Certification

Section 14(a) of the Consumer Product Safety Act (''CPSA'') imposes the requirement that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product or on a reasonable testing program or, for children's products, on tests on a sufficient number of samples by a third party conformity assessment body accredited by the Commission to test according to the applicable requirements. As discussed in part K of this preamble, section 104(b)(1)(B) of the CPSIA refers to standards issued under that section, such as this final rule for portable bed rails, as ''consumer product safety standards.'' Furthermore, the designation of ''consumer product safety standards'' subjects such standards to certain sections of the CPSA, such as section 26(a) of the CPSA, regarding preemption. By the same reasoning, such standards also would be subject to section 14 of the CPSA, regarding testing and certification. Therefore, any such standard would be considered a consumer product safety rule to which products subject to the rule must be certified. We intend to issue a notice of requirements in the near future to explain how accredited laboratories can become recognized by CPSC as third party conformity assessments bodies to test to the new portable bed rails standard.

Additionally, because portable bed rails covered by this final rule are ''children's products,'' they must comply with all other applicable CPSC requirements, such as the lead content and phthalates content requirements in sections 101 and 108 of the CPSIA; the tracking label requirement in section 14(a)(5) of the CPSA; and the consumer registration form requirements in section 104 of the CPSIA.

List of Subjects in 16 CFR Part 1224

Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, and Law enforcement.

For the reasons stated in the preamble, the Commission amends Title 16 of the Code of Federal Regulations by adding a new part to read as follows:

PART 1224—SAFETY STANDARD FOR PORTABLE BED RAILS

Sec.
1224.1 Scope, application, and effective date.
1224.2 Requirements for portable bed rails.

Authority: Sections 3 and 104 of Pub. L. 110–314, 122 Stat. 3016 (August 14, 2008).

§ 1224.1 Scope, application, and effective date.

This part establishes a consumer product safety standard for portable bed rails manufactured or imported on or afterAugust 29, 2012.

§ 1224.2 Requirements for portable bed rails.

(a) Each portable bed rail as defined in ASTM F2085–12, *Standard Consumer Safety Specification for Portable Bed Rails,* approved January 1, 2012, must comply with all applicable provisions of ASTM F2085–12. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of this ASTM standard from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 USA, phone: 610–832–9585; *http://www.astm.org/*. You may inspect copies at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal regulations/ibr_locations.html*.

(b) [Reserved]

Dated: February 22, 2012.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2012–4451 Filed 2–28–12; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1420

[CPSC Docket No. CPSC–2011–0047]

Standard for All-Terrain Vehicles

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Improvement Act of 2008 (''CPSIA'') required the Consumer Product Safety Commission (''Commission,'' ''CPSC,'' or ''we'') to publish, as a mandatory consumer product safety standard, the American National Standard for Four-Wheel All-Terrain Vehicles Equipment Configuration, and Performance Requirements, developed by the Specialty Vehicle Institute of America (American National Standard ANSI/SVIA 1–2007). We did so on November 14, 2008. 73 FR 67385. ANSI/SVIA later issued a 2010 edition of its standard. In accordance with the CPSIA, we are amending the Commission's mandatory ATV standard to reference the 2010 edition of the ANSI/SVIA standard.[1]

DATES: The rule will become effective on April 30, 2012, and will apply to products manufactured or imported on or after that date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of April 30, 2012.

FOR FURTHER INFORMATION CONTACT: Justin Jirgl, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7814; *jjirgl@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

The Consumer Product Safety Improvement Act of 2008 (''CPSIA'') directed the Commission to ''publish in the **Federal Register** as a mandatory consumer product safety standard the American National Standard for Four Wheel All-Terrain Vehicles Equipment Configuration, and Performance Requirements developed by the Specialty Vehicle Institute of America (American National Standard ANSI/SVIA 1–2007).'' 15 U.S.C. 2089(a)(1), as added by section 232 of the CPSIA. Accordingly, on November 14, 2008, we published a final rule mandating ANSI/SVIA 1–2007 as a consumer product safety standard. 73 FR 67385. The final rule is codified at 16 CFR part 1420.

B. The Amendment

1. Procedure

Section 42(b) of the Consumer Product Safety Act (''CPSA'') provides that, if ANSI/SVIA 1–2007 is revised after we have published a **Federal Register** notice mandating the standard as a consumer product safety standard, ANSI must notify us of the revision, and we have 120 days after receiving that notification to issue a notice of proposed rulemaking to amend our mandatory ATV standard ''to include any such revision that the Commission determines is reasonably related to the safe performance of [ATVs] and notify the Institute of any provision it has determined not to be so related.'' 15 U.S.C. 2089(b)(1) and (2). Thereafter, we have 180 days after publication of the proposed amendment to publish a final amendment to revise the ATV standard. *Id.*

2. Changes From 2007 Edition

On March 16, 2011, ANSI notified us that, in December 2010, ANSI approved a revised version of the ANSI/SVIA standard for four-wheel ATVs, ANSI/SVIA 1–2010. We reviewed the changes from the 2007 version. Many changes are minor revisions to the wording in the standard. We considered the substantive changes to be: (1) Elimination from the scope section of a provision calling for expiration of the definition and requirements for the Y–12+ youth ATV age category on July 28, 2011; (2) a change in how to calculate the speed for the braking test of youth ATVs; (3) a change in the force applied to passenger handholds during testing; (4) the addition of a requirement that youth ATVs shall not have a power take-off mechanism; (5) the addition of a requirement that youth ATVs shall not have a foldable, removable, or retractable structure in the ATV foot environment; (6) additional specificity concerning the location and method of operation of the brake control; (7) tightening the parking brake performance requirement, by requiring the transmission to be in ''neutral'' during testing, rather than in ''neutral'' or ''park''; and (8) the requirement that tire pressure information be on the label, when the previous requirement could be interpreted to allow tire pressure information to be on the label,

[1] The Commission voted 3–0–1 to approve publication of this rule. Chairman Inez M. Tenenbaum and Commissioners Nancy A. Nord and Robert S. Adler voted for the rule. Commissioner Ann M. Northup abstained from voting. Commissioner Adler filed a statement concerning this action which may be viewed on the Commission's Web site at *http://www.cpsc.gov/pr/statements.html* or obtained from the Commission's Office of the Secretary.

or in the owner's manual, or on the tires.

3. Proposed Rule

In the **Federal Register** of July 25, 2011 (76 FR 44289), we proposed to amend our mandatory ATV standard to reference ANSI/SVIA 1–2010 instead of ANSI/SVIA 1–2007. In the preamble to the proposed rule, we discussed the changes that had been made to the ANSI/SVIA standard. *Id.* at 44290 through 44291. We concluded that none of the revisions in the ANSI/SVIA 1–2010 standard would diminish the safety of ATVs. *Id.* at 44291. We concluded that, although some changes could be considered more related than others to the safe performance of ATVs, all, in fact, could be related to the safe performance because the changes improve the standard's clarity and consistency and, in that way, advance the standard. We also stated that, given the relatively minor and editorial nature of most of the changes meant to improve the standard's clarity and consistency, it makes sense to revise the Commission's mandatory standard to incorporate all of the provisions of the ANSI/SVIA 1–2010 version to avoid there being two slightly different versions of the standard, the current mandatory standard and the revised voluntary standard. *Id.*

C. Response to Comments on the Proposed Rule

The preamble to the proposed rule invited comments on the proposal to update the mandatory standard and also on numerous other issues related to ATVs that could be relevant to future ATV rulemaking. We received five comments. We describe and respond to the comments in this section of this document. A summary of each of the commenter's topics is presented, and each topic is followed by staff's response. For ease of reading, each topic will be prefaced with a numbered ''Comment''; and each response will be prefaced by a corresponding numbered ''Response.'' Each ''Comment'' is numbered to help distinguish between different topics. The number assigned to each comment is for organizational purposes only and does not signify the comment's value, or importance, or the order in which it was received. Comments on similar topics are grouped together.

1. Comments Related to Incorporating ANSI/SVIA 1–2010

a. Clarification of the Standard

(*Comment 1)*—In the preamble to the proposed rule, we asked whether the proposed revisions to ANSI/SVIA 1–2007 would enhance the clarity of the ANSI standard (76 FR at 44292). One commenter responded to this, delineating the specific sections of the ANSI standard that include clarifying language: these sections are 4.19.1(3)(b) (tire marking), 4.23.1 (general format for labels), 4.23.4.1 (general warning label for Type 1 (single-rider) ATVs, 4.23.5.1 (general warning label for Type II (tandem) ATVs, Figures 5 (tire pressure warning label) and 7 (combined tire pressure and overloading warning label), and 4.23.5.3 (passenger warning label for Type II (tandem) ATVs. The commenter noted that these clarifying changes were made in response to requests it received for interpretation of sections of the standard that were new with the ANSI/SVIA 1–2007 edition of the standard.

(Response 1)—We believe that these changes clarify the sections of the standard that were new with the 2007 edition of the ANSI/SVIA standard.

b. Youth Category Y–12+

(Comment 2)—In the preamble to the proposed rule, we asked about the effect of not eliminating from the scope of the standard the expiration of the definition and requirements for the Y–12+ ATV age category (76 FR at 44292). One comment noted that when ANSI/SVIA 1–2010 was adopted, the lead content limits in section 101 of the CPSIA were in effect, which resulted in limited sales of the Y–6+ and Y–10+ ATV model categories. The Y–12+ category then was maintained due to SVIA's concern that children, particularly those between ages 12–15, would have these as the only alternative to riding adult-size ATVs.

With the passage of Public Law 112–28 in August 2011, the lead ban on youth ATVs no longer is in effect. However, the commenter stated that it is important to maintain the Y–12+ category because few Y–10+ models are available (only two for SVIA members' dealers as of August 2011) and because, as of October 7, 2011, when it submitted its comment, the stay of enforcement on third party testing of youth ATVs was set to expire on November 27, 2011, possibly continuing to restrict the number of available Y–10+ models that could become available on the market. (We note that the stay of enforcement has expired and that there is one laboratory that is both accredited and CPSC-accepted to conduct third party testing for youth ATVs.)

The commenter also stated its opinion that maintaining the Y–12+ age category is not likely to result in children younger than 12 years old riding Y–12+ ATVs, given the labeling requirements of the standard and the dealer monitoring requirements of the Action Plans. Furthermore, the commenter believes that these labeling and dealer monitoring requirements also would prevent the possibility that keeping the Y–12+ category would constitute an implicit approval for riding a Y–12+ ATV when a Y–6+ or Y–10+ size is not available. The commenter stated that it is not aware of any data or research regarding the safety of 6- to 9-year-old riders when operating a Y–12+ ATV, but said it ''strongly recommends that parents strictly follow ATV age recommendations'' and noted that Federal law requires that manufacturers and distributors adhere to age recommendations when offering ATVs for sale. Finally, the commenter noted that Y–10+ and Y–12+ category ATVs have the same maximum speed limitations and capabilities and that the Y–12+ ATVs can be larger in size and/or weight.

Another commenter expressed opposition to the introduction of the Y–12+ models, stating that ''placing children on a vehicle that is larger, heavier, or faster than what is currently defined as an 'adult-sized' ATV would be a step backwards that would only serve to put our children at an even greater risk of death and injury.'' Further, the commenter ''urge[d] CPSC not to take any action that would permit children to operate any ATV that is larger than 90 cc.''

(Response 2)—We believe that elimination of the scope provision (which effectively keeps the Y–12+ category of youth ATV) would not be problematic. The Y–12+ category was not new with the 2007 or the 2010 editions of the ANSI/SVIA standard; it was, in fact, one of the youth ATV categories in the 1990 first edition of the ANSI/SVIA standard. Furthermore, Y–12+ ATVs are not necessarily larger or heavier than what is currently defined as an ''adult-sized'' ATV. They also are, by definition in the standard, not faster than an adult ATV. According to the definition in the 2010 edition of the standard, Y–12+ ATVs are required to have the same maximum speed and speed limitation requirements as the Y–10+ model. The Y–10+ and the Y–12+ ATV models are not faster than what is currently defined as an adult-size ATV because they both must have a maximum speed that is lower than that of an adult-size ATV.

It is important to note that the ANSI/SVIA standard (either 1990, 2001, 2007, or 2010 edition) never categorized youth and adult ATVs by cc engine size; the categories were defined and differentiated in the standard by the

maximum allowable speed and the presence of a speed limiter (which parents and caregivers could use to reduce the maximum allowable speed further).

Using 90cc engine size as a demarcation between youth and adult ATVs originated with the 1988 consent decrees between the CPSC and ATV distributors. (The consent decrees expired in 1998.) Under the consent decrees, only ATVs between 70 to 90 cc were to be marketed for riders 12 years of age and older, and ATVs less than 70 cc were to be marketed for use by riders under 12 years of age. ATVs 90 cc and above were to be marketed for use by riders 16 years of age and older, according to the consent decrees.

In 2006, we issued a proposed rule on ''Standards for All-Terrain Vehicles and Ban of Three-Wheeled All Terrain Vehicles.'' The proposed rule, which pre-dated the CPSIA's enactment and has not been finalized, would, among other things, change the categorization of ATVs based on engine size (as established by the consent decrees) and instead, categorize youth ATVs based on maximum speed. 71 FR 45904, 45908 (August 10, 2006). We explained our rationale for this change in the preamble to the proposed rule. *Id.* It cannot be assumed that a larger engine displacement ATV is necessarily heavier than a smaller engine displacement ATV. We will address this issue further when we complete our 2006 rulemaking. However, we are not aware of any data to show that continuing to have this category included in the standard would reduce the safety of ATVs. Thus, we continue to believe that having the Y–12+ category included in the standard would not be problematic.

c. The Test for Type II ATV Passenger Handholds

(*Comment 3*)—The 2010 edition of the ANSI/SVIA standard includes a test for the passenger handholds on Type II (tandem) ATVs. Under the 2007 version of the standard, the test specifications could be interpreted to mean that the test could be applied in either a downward or an upward direction, or both. The 2010 version states that the force applied to the handhold must be upward. Before preparing the July 6, 2011 staff briefing package in support of the proposed rule, CPSC staff contacted the SVIA with staff's concern that the revised language limits the test procedure. SVIA indicated that it was not opposed to changing the standard to add a downward testing component and that such a change would be considered in the next revision of ANSI/SVIA 1–2010.

In response to the proposed rule, SVIA opined that the primary direction of force applied to ATV handholds is in the upward direction. SVIA stated it had received no comments during the ANSI balloting process that suggested that the force be applied in a downward direction, and it is unaware of any reports of an ATV handhold failing under downward force. SVIA stated that it ''has committed to adding a downward testing component to the passenger handhold testing standard during the next revision of the ANSI/SVIA voluntary standard.''

(Response 3)—We are satisfied with SVIA's commitment to adding a downward testing component to the passenger handhold test during the next revision of the ANSI/SVIA voluntary standard.

d. Effective Date

(*Comment 4)*—We proposed that the amendment mandating ANSI/SVIA 1–2010 would take effect 30 days after publication of a final rule and apply to ATVs manufactured or imported after that date. In a joint comment submitted by the seven major distributors of ATVs, they noted that the ANSI/SVIA standard requires that ATVs have a certification label indicating that they comply with the ANSI/SVIA standard. The commenters said they will need to change these certification labels to specify compliance with the 2010 rather than the 2007 ANSI/SVIA standard. They noted that some companies may still be producing 2012 model year (''MY'') ATVs at the time when a final rule would become effective. This would mean that some companies would have to change the certification label in the middle of 2012 MY production. The commenters stated that this could create errors in labeling particular ATVs and could create confusion in the marketplace. They requested that the rule become effective for 2013 MY ATVs. In the alternative, the commenters requested a 60-day effective date to allow ATV manufacturers time to obtain new certification labels.

(Response 4)—Keying an effective date to a model year rather than a date certain would be difficult to enforce and could create greater confusion. We understand that companies will need time to provide the correct certification labels. Because the differences between the 2007 and the 2010 ANSI/SVIA standards are primarily editorial, we are changing the effective date to specify that the rule will take effect 60 days after publication in the **Federal Register**, and that it will apply to ATVs manufactured or imported on or after that date.

2. Comments Responding to the Commission's Request for Comments and Information and Comments Addressing Issues in Our 2006 Proposed Rule

The preamble to the proposed rule asked several questions that were beyond the scope of the immediate revisions to the mandatory standard, but relevant to future ATV rulemaking (76 FR at 44292). For example, one question asked whether there are any state laws prohibiting the use of a Y–12+ ATV by children younger than 12 and the effects of ATV-related injuries or deaths in those states that have new or updated minimum age requirements for ATV operation since the adoption of ANSI/SVIA–1–2007 (id.). Several commenters responded to those questions, addressing issues such as whether there should be restrictions on the sale, rental, or use of ATVs by individuals under a certain age, and other matters.

Other commenters addressed matters that pertained more directly to the proposed rule that we had published in the **Federal Register** on August 10, 2006 (71 FR 45904). For example, we received comments expressing support and opposition for roll over protection systems in ATVs.

We appreciate the commenters' responsiveness to the questions presented in the preamble to the proposed rule, as well as their interest in other ATV issues. Because this rulemaking focuses on the adoption of the modified ANSI/SVIA 1–2010 standard pursuant to section 42(b) of the CPSA, we will not address those comments in this preamble. However, we will consider the information and opinions presented by the commenters and may address them in a separate proceeding. For example, for commenters who raised issues that are more appropriate to the proposed rule that we issued in 2006, we will consider those comments when developing methods for addressing ATV safety, and will respond to them when we finalize that rule.

D. Brief Description of the Final Rule

The final rule revises § 1420.3(a), ''Requirements for four-wheel ATVs'' to incorporate by reference the ANSI/SVIA 1–2010 standard instead of the ANSI/SVIA 1–2007 version.

E. Effective Date

As we stated in the preamble to the proposed rule (76 FR at 44291), the CPSIA provides a timetable for us to

issue a notice of proposed rulemaking (within 120 days of receiving notification of a revised ANSI/SVIA standard) and to issue a final rule (within 180 days of publication of the proposed rule), but it does not set an effective date. We proposed that the amendment updating the ANSI/SVIA standard take effect 30 days after publication of a final rule because the differences between the 2007 version of the standard and the 2010 version are relatively minor and largely editorial and because the 2010 version of the ANSI/SVIA standard is already in effect as a voluntary standard.

As we noted in section C of this preamble, we received a comment from several ATV companies suggesting that the amended standard become effective for 2013 MY ATVs or 60 days after publication of a final rule, rather than the 30 days we proposed. To allow time for ATV companies to update their certification labels, the final rule provides a 60-day effective date, and it applies to ATVs that are manufactured or imported on or after that date.

F. Notice of Requirements

In accordance with section 14(a)(3)(B)(vi) of the CPSA, on August 27, 2010, we published a notice of requirements for accreditation of third party conformity assessment bodies for testing ATVs designed or intended primarily for children 12 years of age or younger. 75 FR 52616. The notice of requirements provided the criteria and process for our acceptance of accreditation of third party conformity assessment bodies for testing ATVs pursuant to 16 CFR part 1420, which, at that time, incorporated by reference ANSI/SVIA 1–2007. With this rule, we are changing that reference in 16 CFR part 1420 to ANSI/SVIA 1–2010. With regard to youth ATVs, only four revisions in the 2010 edition are related to youth ATVs and only one of those, the brake speed test requirements (section 7 of the standard), is related to testing. Because this change does not constitute a substantial change in the requirement that would affect the associated third-party conformance testing, and, by this final rule, the Commission recognizes the functional equivalence of the specific brake speed test between the two versions of the standard. A Notice of Requirements has been issued by the Commission for the prior version of the rule, the 2007 edition, and the Commission has accepted the accreditation of a third party conformity assessment body for purposes of testing youth ATVs. The current Notice of Requirements for third party testing of youth ATVs will remain in effect until the Notice of Requirements final rule for ANSI/SVIA 1–2010 has been completed. The Commission is continuing to accept that accreditation so that the third party conformity assessment body can test to all aspects of the 2010 edition including the new brake speed test requirements in section 7. We are in the process of developing a notice of proposed rulemaking regarding accreditation of third party conformity assessment bodies. In that proposed rule, we will address the impact of accepting the revised ANSI/SVIA standard on the accreditation of third party conformity assessment bodies.

G. Regulatory Flexibility Act

As noted in the preamble to the proposed rule, in accordance with the Regulatory Flexibility Act (''RFA''), we examined the potential impact on small entities that could occur from amending our ATV standard to reference the 2010 version of the ANSI/SVIA standard. 76 FR at 44291–92. We concluded that amending the mandatory ATV standard to reference the 2010 edition of the ANSI/SVIA ATV standard would not have a significant impact on a substantial number of small businesses or other small entities because the differences between the 2007 and 2010 editions of the ANSI/SVIA standard are relatively minor modifications or updates that are not expected to have a significant impact on any manufacturers or importers of ATVs. We did not receive any comments on this conclusion, and we are not aware of any other information that would change this conclusion.

H. Paperwork Reduction Act

This amendment would not impose any information collection requirements. Accordingly, this rule is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

I. Environmental Considerations

Our regulations provide a categorical exemption for our rules from any requirement to prepare an environmental assessment or an environmental impact statement because they ''have little or no potential for affecting the human environment.'' 16 CFR 1021.5(c)(2). This amendment falls within the categorical exemption.

List of Subjects in 16 CFR Part 1420

Administrative practice and procedure, Business and industry, Consumer protection, Imports, Incorporation by reference, Information, Infants and children, Labeling, Law enforcement, Recreation and recreation areas, Reporting and recordkeeping requirements, Safety.

For the reasons stated in the preamble, the Commission amends 16 CFR part 1420 as follows:

PART 1420—REQUIREMENTS FOR ALL TERRAIN VEHICLES

■ 1. The authority citation for part 1420 continues to read as follows:

Authority: The Consumer Product Safety Improvement Act of 2008, Pub. L. 110–314, § 232, 122 Stat. 3016 (August 14, 2008).

§ 1420.1 [Amended]

■ 2. In the second sentence of § 1420.1, remove the words, ''April 13, 2009,'' and in their place add ''April 30, 2012.''.

■ 3. Revise paragraph (a) of § 1420.3 to read as follows:

§ 1420.3 Requirements for four-wheel ATVs.

(a) Each ATV shall comply with all applicable provisions of the American National Standard for Four-Wheel All-Terrain Vehicles (American National Standards Institute, Inc. ANSI/SVIA 1–2010), approved December 23, 2010. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the Specialty Vehicle Institute of America, 2 Jenner, Suite 150, Irvine, CA 92618–3806; telephone 949–727–3727 ext.3023; *www.svia.org*. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

* * * * *

Dated: February 16, 2012.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2012–4385 Filed 2–28–12; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–345]

Schedules of Controlled Substances: Extension of Temporary Placement of Five Synthetic Cannabinoids Into Schedule I of the Controlled Substances Act

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final order.

SUMMARY: This Final Order is issued by the Administrator of the Drug Enforcement Administration (DEA) to extend the temporary scheduling of the five synthetic cannabinoids 1-pentyl-3-(1-naphthoyl)indole (JWH–018), 1-butyl-3-(1-naphthoyl)indole (JWH–073), 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH–200), 5-(1,1-dimethylheptyl)-2-(3-hydroxycyclohexyl)-phenol (CP–47,497), and 5-(1,1-dimethyloctyl)-2-(3-hydroxycyclohexyl)-phenol (cannabicyclohexanol, CP–47,497 C8 homologue) including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, into Schedule I of the Controlled Substances Act (CSA). The temporary scheduling of these five synthetic cannabinoids is due to expire on February 29, 2012. This document will extend the temporary scheduling of these five synthetic cannabinoids to August 29, 2012 or until rulemaking proceedings are completed, whichever comes first.

DATES: *Effective Date:* February 29, 2012.

FOR FURTHER INFORMATION CONTACT: Alan G. Santos, Associate Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 307–7165.

SUPPLEMENTARY INFORMATION: On March 1, 2011, the Administrator of the DEA published a Final Order in the **Federal Register** (76 FR 11075) amending 21 CFR 1308.11(g) to temporarily place these five synthetic cannabinoids into Schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). This Final Order, which became effective on the date of publication, was based on findings by the Administrator of the DEA that the temporary scheduling of these five synthetic cannabinoids was necessary to avoid an imminent hazard to the public safety pursuant to 21 U.S.C. 811(h)(1). Section 201(h)(2) of the CSA (21 U.S.C. 811(h)(2)) requires that the temporary scheduling of a substance expire at the end of one year from the date of issuance of the order. However, during the pendency of proceedings under 21 U.S.C. 811(a)(1) with respect to the substance, temporary scheduling of that substance may be extended for up to six months. Proceedings for the scheduling of a substance under 21 U.S.C. 811(a) may be initiated by the Attorney General (delegated to the Administrator of the DEA pursuant to 28 CFR 0.100) on his own motion, at the request of the Secretary of Health and Human Services,[1] or on the petition of any interested party.

The DEA has gathered and reviewed the available information regarding the pharmacology, chemistry, trafficking, actual abuse, pattern of abuse and the relative potential for abuse for these five synthetic cannabinoids. On June 21, 2011 the Administrator of the DEA submitted a letter to the Assistant Secretary, requesting scientific and medical evaluations and scheduling recommendations for these five synthetic cannabinoids. In response to this letter, on the following dates the Assistant Secretary provided to DEA scientific and medical evaluations and recommendations that all five of these synthetic cannabinoids be placed in Schedule I: January 5, 2012 (1-pentyl-3-(1-naphthoyl)indole (JWH–018)); February 6, 2012 (1-butyl-3-(1-naphthoyl)indole (JWH–073)) and (1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH–200)); February 13, 2012 5-(1,1-dimethylheptyl)-2-(3-hydroxycyclohexyl)-phenol (CP–47,497), and 5-(1,1-dimethyloctyl)-2-(3-hydroxycyclohexyl)-phenol (cannabicyclohexanol, CP–47,497 C8 homologue). Proceedings regarding these five synthetic cannabinoids have been initiated in accordance with 21 U.S.C. 811(a)(1). Therefore, pursuant to 21 U.S.C. 811(h)(2), the Administrator of the DEA hereby orders that the temporary scheduling of 1-pentyl-3-(1-naphthoyl)indole (JWH–018), 1-butyl-3-(1-naphthoyl)indole (JWH–073), 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH–200), 5-(1,1-dimethylheptyl)-2-(3-hydroxycyclohexyl)-phenol (CP–47,497), and 5-(1,1-dimethyloctyl)-2-(3-hydroxycyclohexyl)-phenol (cannabicyclohexanol, CP–47,497 C8 homologue) including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, is extended to August 29, 2012, or until rulemaking proceedings are completed, whichever comes first.

In accordance with this Final Order, the Schedule I requirements for handling (1-pentyl-3-(1-naphthoyl)indole (JWH–018), 1-butyl-3-(1-naphthoyl)indole (JWH–073), 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH–200), 5-(1,1-dimethylheptyl)-2-(3-hydroxycyclohexyl)-phenol (CP–47,497), and 5-(1,1-dimethyloctyl)-2-(3-hydroxycyclohexyl)-phenol (cannabicyclohexanol, CP–47,497 C8 homologue)) including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, will remain in effect after February 29, 2012.

Pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act) (5 U.S.C. 801–808), DEA has submitted a copy of this Final Order to both Houses of Congress and to the Comptroller General.

Dated: February 24, 2012.

Michele M. Leonhart,

Administrator.

[FR Doc. 2012–4916 Filed 2–28–12; 8:45 am]

BILLING CODE 4410–09–P

[1] Because the Secretary of the Department of Health and Human Services has delegated to the Assistant Secretary for Health of the Department of Health and Human Services the authority to make domestic drug scheduling recommendations, for purposes of this Final Order, all subsequent references to ''Secretary'' have been replaced with ''Assistant Secretary.''

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice 7810]

RIN 1400–AD08

Amendment to the International Traffic in Arms Regulations: Haiti

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations to clarify that the Coast Guard of Haiti is an eligible end-user. This change makes it clear that the existing exceptions allow for exports to the Coast Guard of Haiti.

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

FOR FURTHER INFORMATION CONTACT: Ms. Candace M. J. Goforth, Acting Director, Office of Defense Trade Controls Policy, U.S. Department of State, telephone (202) 663–2792, or email *DDTCResponseTeam@state.gov.* ATTN: Regulatory Change, Part 126, Haiti.

SUPPLEMENTARY INFORMATION: This rule implements section 7045(c) of Public Law 112–74 by amending ITAR § 126.1(j) to clarify that U.S. policy on arms exports to the Government of Haiti includes the Coast Guard as an eligible end-user. Therefore, ''to include the Coast Guard'' is added to § 126.1(j)(1). In addition, in paragraph (j)(2), the word ''exemptions'' is replaced with ''exceptions,'' as it more accurately describes the listing in paragraph (j)(1).

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from § 553 (Rulemaking) and § 554 (Adjudications) of the Administrative Procedure Act. Since the Department is of the opinion that this rule is exempt from 5 U.S.C. 553, it is the view of the Department of State that the provisions of § 553(d) do not apply to this rulemaking. Therefore, this rule is effective upon publication. The Department also finds that, given the national security issues surrounding U.S. policy towards the Government of Haiti, notice and public procedure on this rule would be impracticable, unnecessary, or contrary to the public interest; for the same reason, the rule will be effective immediately. *See* 5 U.S.C. 808(2).

Regulatory Flexibility Act

Since this amendment is not subject to 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Act of 1995

This amendment does not involve a mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this amendment.

Executive Order 12866

The Department is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866. However, the Department has reviewed the rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order.

Executive Order 12988

The Department of State has reviewed the amendment in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13563

The Department of State has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

Executive Order 13175

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 126 is amended as follows:

PART 126—GENERAL POLICIES AND PROVISIONS

■ 1. The authority citation for part 126 is revised to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225, Pub. L. 108–375; Sec. 7089, Pub. L. 111–117; Sec. 7045, Pub. L. 112–74.

■ 2. Section 126.1 is amended by revising paragraphs (j)(1)(i) and (j)(2) to read as follows:

§ 126.1 Prohibited exports, imports, and sales to or from certain countries.

* * * * *

(j) *Haiti.* (1) * * *

(i) Defense articles and defense services intended solely for the support of or use by security units that operate under the command of the Government of Haiti, to include the Coast Guard;

* * * * *

(2) All shipments of arms and related materials consistent with the above exceptions shall only be made to Haitian security units as designated by the Government of Haiti, in coordination with the U.S. Government.

* * * * *

Dated: February 21, 2012.

Rose E. Gottemoeller,

Acting Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2012–4855 Filed 2–28–12; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9581]

RIN 1545–BG60

Public Inspection of Material Relating to Tax-Exempt Organizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations pertaining to the public inspection of material relating to tax-exempt organizations and final regulations pertaining to the public inspection of written determinations and background file documents. These regulations are necessary to clarify rules relating to information and materials made available by the IRS for public inspection under the Internal Revenue

Code (Code). The final regulations affect certain organizations exempt from Federal income tax, organizations that were exempt but are no longer exempt from Federal income tax, and organizations that were denied tax-exempt status.

DATES: *Effective Date:* These regulations are effective on February 29, 2012.

FOR FURTHER INFORMATION CONTACT: Mary Ellen Keys, (202) 622–4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301). Section 6104(a) of the Code relates to information pertaining to tax-exempt organizations made available by the IRS for public inspection. Section 6110 of the Code relates to information pertaining to written determinations made publicly available by the IRS.

These final regulations amend §§ 301.6104(a)–1(i) and 301.6110–1(a) to eliminate the portions of the previous regulations that the United States Court of Appeals for the District of Columbia Circuit, in *Tax Analysts* v. *IRS,* 350 F.3d 100 (D.C. Cir. 2003), held violated section 6110 of the Code. Prior to the *Tax Analysts* decision, the IRS relied on those regulations to withhold letter rulings denying or revoking tax-exempt status from public inspection under section 6110. In accordance with the *Tax Analysts* decision, the IRS now makes those letter rulings available for public inspection pursuant to section 6110. These final regulations also update § 301.6104(a)–1 to conform to other current laws and administrative practices.

The final regulations affect organizations exempt from Federal income tax under section 501(a) or section 527, organizations that were exempt but are no longer exempt from Federal income tax, and organizations that were denied tax-exempt status.

A notice of proposed rulemaking (REG–116215–07) was published in the **Federal Register** (72 FR 45394–01) on August 14, 2007. One comment was received from the public in response to the notice of proposed rulemaking. This comment was considered and is available for public inspection at *www.regulations.gov* or upon request. No public hearing was requested or held. In this Treasury decision, the proposed regulations are adopted as revised in this preamble.

Summary of Comment and Explanation of Changes Made to the Proposed Regulation

The comment suggested that the proposed revisions did not accomplish the objective stated in the summary to the notice of proposed rulemaking, because § 301.6110–1(a) was not changed. The comment urged that § 301.6110–1(a) be revised to delete everything after the sentence that concludes ''section 6104,'' which immediately precedes the portion of the regulation that the court held violated the statute in *Tax Analysts.* The comment further suggested that, because no changes were made to the section 6110 regulations, paragraph (f) of § 301.6104(a)–1 should be revised to reflect the decision in *Tax Analysts.* In response to the comment, paragraph (f) of § 301.6104(a)–1 is revised to explain that negative determinations issued to organizations that applied for an exemption from Federal income tax are included among the written determinations that are made available under section 6110. No changes were made to § 301.6110–1(a) in response to the comment because the language in the notice of proposed rulemaking and these final regulations already is consistent with the substance of the comment.

These final regulations also include minor, nonsubstantive revisions that vary from the text of the proposed regulations. Paragraph (a) of § 301.6104(a)–1 of these final regulations is revised to make clear that, in the past, some applications were destroyed and therefore are not available for inspection. Paragraph (c)(4) of § 301.6104(a)–1 of these final regulations is revised to include among the information pertaining to an organization's status that is open to public inspection under section 6104(a) any letter or document issued by the IRS relating to exempt operating foundation status under section 4940(d)(2). Also, because the IRS no longer issues advance and final rulings, the reference to ''final determination letter'' in § 301.6104(a)–1(c)(4) is revised to read ''determination letter.''

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not include a collection of information, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small businesses.

Drafting Information

The principal author of these final regulations is Mary Ellen Keys, Office of the Associate Chief Counsel (Procedure & Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

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

■ **Par. 2.** § 301.6104(a)–1 is revised to read as follows:

§ 301.6104(a)–1 Public inspection of material relating to tax-exempt organizations.

(a) *Applications for exemption from Federal income tax, applications for a group exemption letter, and supporting documents.* If the Internal Revenue Service determines that an organization described in section 501(c) or section 501(d) is exempt from Federal income tax for any taxable year, the application upon which the determination is based, together with any supporting documents, shall be open to public inspection. Such applications and supporting documents shall be open for public inspection even after any revocation of the Internal Revenue Service's determination that the organization is exempt from Federal income tax. In the past, some applications were destroyed and therefore are not available for inspection. For purposes of determining the availability for public inspection, a claim for exemption from Federal income tax filed to re-establish exempt status after denial thereof under the

provisions of section 503 or 504 (as in effect on December 31, 1969), or under the corresponding provisions of any prior revenue law, is considered an application for exemption from Federal income tax.

(b) *Notices of status filed by political organizations.* If, in accordance with section 527(i), an organization notifies the Internal Revenue Service that it is a political organization as described in section 527, exempt from Federal income tax for any taxable year, the notice of status filed by the political organization shall be open to public inspection.

(c) *Letters or documents issued by the Internal Revenue Service with respect to an application for exemption from Federal income tax.* If an application for exemption from Federal income tax is filed with the Internal Revenue Service after October 31, 1976, and is open to public inspection under paragraph (a) of this section, then any letter or document issued to the applicant by the Internal Revenue Service that relates to the application is also open to public inspection. For rules relating to when a letter or document is issued, see § 301.6110–2(h). Letters or documents to which this paragraph (c) applies include, but are not limited to—

(1) Favorable rulings and determination letters, including group exemption letters, issued in response to applications for exemption from Federal income tax;

(2) Technical advice memoranda issued with respect to the approval, or subsequent approval, of an application for exemption from Federal income tax;

(3) Letters issued in response to an application for exemption from Federal income tax (including applications for a group exemption letter) that propose a finding that the applicant is not entitled to be exempt from Federal income tax, if the applicant is subsequently determined, on the basis of that application, to be exempt from Federal income tax; and

(4) Any letter or document issued by the Internal Revenue Service relating to an organization's status as an organization described in section 509(a), 4940(d)(2), 4942(j)(3), or 4943(f), including a determination letter that the organization is or is not a private foundation.

(d) *Requirement of exempt status.* An application for exemption from Federal income tax (including applications for a group exemption letter), supporting documents, and letters or documents issued by the Internal Revenue Service that relate to the application shall not be open to public inspection before the organization is determined, on the basis of that application, to be exempt from Federal income tax for any taxable year. If an organization is determined to be exempt from Federal income tax for any taxable year, these materials shall not be withheld from public inspection on the basis that the organization is subsequently determined not to be exempt for any other taxable year.

(e) *Documents included in the term ''application for exemption from Federal income tax.''* For purposes of this section—

(1) *Prescribed application form.* If a form is prescribed for an organization's application for exemption from Federal income tax, the application includes the form and all documents and statements that the Internal Revenue Service requires to be filed with the form, any amendments or revisions to the original application, or any resubmitted applications where the original application was submitted in draft form or was withdrawn. An application includes an application for reinstatement of tax-exempt status after an organization's tax-exempt status has been revoked pursuant to section 6033(j). An application submitted in draft form or an application submitted and later withdrawn is not considered an application.

(2) *No prescribed application form.* If no form is prescribed for an organization's application for exemption from Federal income tax, the application includes the submission by letter requesting recognition of tax exemption and any statements or documents as prescribed by Revenue Procedure 2011–9, IRB 2011–2 (January 10, 2011), or any successor guidance describing procedures for application for exempt status pursuant to section 501 and section 521 of the Internal Revenue Code. See § 601.601(d)(2)(ii)(*b*).

(3) *Application for a Group Exemption Letter.* The application for a group exemption letter includes the letter submitted by or on behalf of subordinate organizations that seek exempt status pursuant to a group exemption letter and any statements or documents as prescribed by Revenue Procedure 80–27, 1980–1 CB 677 (June 20, 1980), and any successor guidance. See § 601.601(d)(2)(ii)(*b*).

(4) *Notice of status filed under section 527(i).* For purposes of this section, documents included in the term ''notice of status filed under section 527(i)'' include—

(i) Form 8871, ''Political Organization Notice of Section 527 Status;''

(ii) Form 8453–X, ''Declaration of Electronic Filing of Notice of Section 527 Status;'' and

(iii) Any other additional forms or documents that the Internal Revenue Service may prescribe.

(f) *Material open to public inspection under section 6110.* Under section 6110, certain written determinations, including negative determinations issued to organizations that applied for an exemption from Federal income tax, issued by the Internal Revenue Service are made available for public inspection. Section 6110 does not apply, however, to material that is open to public inspection under section 6104. See sections 6104(a)(1) and 6110(l)(1).

(g) *Supporting documents defined.* For purposes of this section, ''supporting documents,'' with respect to an application for exemption from Federal income tax, means any statement or document not described in paragraph (e) of this section that is submitted by the organization or group in support of its application prior to a determination described in paragraph (a) of this section. Items submitted in connection with an application in draft form, or with an application submitted and later withdrawn, are not supporting documents. There are no supporting documents with respect to Notices of Status filed by political organizations.

(h) *Statement of exempt status.* For efficient tax administration, the Internal Revenue Service may publish, in paper or electronic format, the names of organizations currently recognized as exempt from Federal income tax, including organizations recognized as exempt from Federal income tax under particular paragraphs of section 501(c) or section 501(d). In addition to having the opportunity to inspect material relating to an organization exempt from Federal income tax, a person may request a statement, or the Internal Revenue Service may disclose, in response to or in anticipation of a request, the following information—

(1) The subsection and paragraph of section 501 (or the corresponding provision of any prior revenue law) under which the organization or group has been determined, on the basis of an application open to public inspection, to qualify for exemption from Federal income tax; and

(2) Whether an organization or group is currently recognized as exempt from Federal income tax.

(i) *Publication of non-exempt status.* (1) For publication of the notice of the revocation of a determination that an organization is described in section 501(c)(3), see section 7428(c).

(2) For publication of a list including any organization the tax exemption of which is revoked for failure to file

required returns or notices for three consecutive years, see section 6033(j).

(3) For publication of notice of suspension of tax exemption of terrorist organizations, see section 501(p).

(j) *Withholding of certain information from public inspection.* For rules relating to certain information contained in an application for exemption from Federal income tax and supporting documents that will be withheld from public inspection, see § 301.6104(a)–5(a).

(k) *Procedures for inspection.* For rules relating to procedures for public inspection of applications for exemption from Federal income tax and supporting documents, see § 301.6104(a)–6.

(l) *Effective/applicability date.* The rules of this section apply February 29, 2012.

■ **Par. 3.** § 301.6110–1 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 301.6110–1 Public inspection of written determinations and background file documents.

(a) *General rule.* Except as provided in § 301.6110–3, relating to deletion of certain information, § 301.6110–5(b), relating to actions to restrain disclosure, paragraph (b)(2) of this section, relating to technical advice memoranda involving civil fraud and criminal investigations, and jeopardy and termination assessments, and paragraph (b)(3) of this section, relating to general written determinations relating to accounting or funding periods and methods, the text of any written determination (as defined in § 301.6110–2(a)) issued pursuant to a request postmarked or hand delivered after October 31, 1976, shall be open to public inspection in the places provided in paragraph (c)(1) of this section. The text of any written determination issued pursuant to a request postmarked or hand delivered before November 1, 1976, shall be open to public inspection pursuant to section 6110(h) and § 301.6110–6, when funds are appropriated by Congress for such purpose. The procedures and rules set forth in §§ 301.6110–1 through 301.6110–5 and § 301.6110–7 do not apply to written determinations issued pursuant to requests postmarked or hand delivered before November 1, 1976, unless § 301.6110–6 states otherwise. There shall also be open to public inspection in each place of public inspection an index to the written determinations subject to inspection at such place. Each such index shall be arranged by section of the Internal Revenue Code, related statute or tax treaty and by subject matter description within such section in such manner as the Commissioner may from time to time provide. The Commissioner shall not be required to make any written determination or background file document open to public inspection pursuant to section 6110 or refrain from disclosure of any such documents or any information therein, except as provided by section 6110 or with respect to a discovery order made in connection with a judicial proceeding. The provisions of section 6110 shall not apply to material that is open to public inspection under section 6104. See section 6110(l)(1).

* * * * *

(d) *Effective/applicability date.* The rules of paragraph (a) apply February 29, 2012.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: February 15, 2012.

Emily S. McMahon,

Acting Assistant Secretary of the Treasury, Tax Policy.

[FR Doc. 2012–4740 Filed 2–28–12; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0423; FRL–9338–3]

Mevinphos; Order Revoking Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Order of revocation.

SUMMARY: EPA is revoking all the tolerances for the pesticide mevinphos. EPA previously required data to be submitted to support these tolerances. However, no person submitted timely notice to EPA of intent to provide the required data.

DATES: This order of revocation is effective February 29, 2012. Objections and requests for hearings must be received on or before April 30, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.B. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0423. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; email address: *nevola.joseph@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I file an objection or hearing request?

Under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this order and may also request a hearing on those objections. You must file your objection

or request a hearing on this order in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0423 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 30, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0423, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. EPA's Order To Revoke Tolerances

A. What action is the Agency taking?

Pursuant to FFDCA section 408(f), EPA determined that additional data are reasonably required to support the continuation of the tolerances for mevinphos which are codified at 40 CFR 180.157. In the **Federal Register** of June 29, 2011 (76 FR 38037) (FRL–8879–2), EPA issued a final data call-in order in follow-up to a proposed order which published in the **Federal Register** on July 28, 2010 (75 FR 44181) (FRL–8835–7). In the final data call-in order of June 29, 2011, EPA required the submission of various data to support the continuation of the tolerances for the pesticide mevinphos. Because there are currently no domestic registrations for mevinphos, these tolerances are referred to as ''import tolerances.'' According to the terms of the order, if the Agency did not receive a section 408(f) Response Form identifying a person who agrees to submit the required data within 90 days after publication of the final order (September 27, 2011), EPA would proceed to revoke the mevinphos tolerances at 40 CFR 180.157.

On July 11, 2011 (76 FR 40628) (FRL–8879–2), EPA published a notice in the **Federal Register** in which the Agency made a minor correction regarding the final data call-in order of June 29, 2011. Subsequently, EPA received no submissions of the ''§ 408(f) Order Response'' form within the required 90-day period. Therefore, in this order, EPA is revoking all the tolerances for the pesticide mevinphos in 40 CFR 180.157, which includes tolerances for the following commodities: Broccoli, cabbage, cauliflower, celery, cucumber, grape, lettuce, melon (determined on the edible portion with rind removed), pea, pepper, spinach, squash, summer; strawberry, tomato, and watermelon.

This tolerance revocation order for mevinphos is subject to the objection and hearing procedure in FFDCA section 408(g)(2) but the only material issue in such a procedure is whether a submission required by the order was made in a timely fashion.

B. What is the Agency's authority for taking this action?

Under FFDCA section 408(f)(2), if no response is received to an order issued pursuant to section 408(f)(1), EPA may by order published in the **Federal Register** revoke the tolerance or exemption in question.

C. When do these actions become effective?

As stated in the **DATES** section, this order is effective on the date of publication in the **Federal Register**. An order issued under FFDCA section 408(f)(2) shall take effect upon publication unless the regulation or order specifies otherwise. However, the Agency may stay the effectiveness of the regulation or order if, after issuance of such regulation or order, objections are filed with respect to such regulation or order pursuant to FFDCA section 408(g)(2). (21 U.S.C. 346a(g)(1)).

Any commodities listed in the regulatory text of this document that are treated with the pesticide subject to this order, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(l)(5), as established by the Food Quality Protection Act (FQPA). Under this unit, any residues of the pesticide in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under the Federal Insecticide, and Rodenticide Act.
2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

III. Statutory and Executive Order Reviews

This action, which revokes tolerances due to a failure to comply with a data call-in order, is in the form of an order and not a rule. (21 U.S.C. 346a(f)(1)(C)). Under the Administrative Procedures Act (APA), orders are expressly excluded from the definition of a rule. (5 U.S.C. 551(4)). Accordingly, the regulatory assessment requirements imposed on a rulemaking do not apply to this action, as explained further in the following discussion.

A. Executive Order 12866 and Executive Order 13563

Because this order is not a ''regulatory action'' as that term is defined in Executive Order 12866 entitled ''*Regulatory Planning and Review*'' (58 FR 51735, October 4, 1993), this action is not subject to review by the Office of Management and Budget (OMB) under Executive Orders 12866 and 13563 entitled ''*Improving Regulation and Regulatory Review*'' (76 FR 3821, January 21, 2011),

B. Paperwork Reduction Act

This action does not impose additional burdens that require approval by OMB under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). The information collection activities associated with the prior order requesting data from any party interested in supporting the tolerances being revoked today were approved by OMB under OMB Control No. 2070–0174, and are identified by EPA ICR No. 2288.01. Burden is defined at 5 CFR 1320.3(b). Under the PRA, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's

regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument, or form, if applicable.

C. Regulatory Flexibility Act

Since this order is not a rule under the APA (5 U.S.C. 551(4)), and does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

D. Unfunded Mandates Reform Act; and Executive Orders 13132, and 13175

This order directly regulates growers, food processors, food handlers and food retailers, not States or tribes; nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132 entitled ''*Federalism''* (64 FR 43255, August 10, 1999) and Executive Order 13175 entitled ''*Consultation and Coordination with Indian Tribal Governments''* (65 FR 67249, November 9, 2000) do not apply to this order. In addition, this order does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531–1538).

E. Executive Orders 13045, 13211 and 12898

As indicated previously, this action is not a ''regulatory action'' as defined by Executive Order 12866. As a result, this action is not subject to Executive Order 13045, entitled ''*Protection of Children from Environmental Health Risks and Safety Risks'',* (62 FR 19885, April 23, 1997) and Executive Order 13211 entitled ''*Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'',* (66 FR 28355, May 22, 2001). In addition, this order also does not require any special considerations under Executive Order 12898 entitled ''*Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations''* (59 FR 7629, February 16, 1994).

F. National Technology Transfer and Advancement Act

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), (15 U.S.C. 272 note).

IV. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.* does not apply because this action is not a rule as that term is defined in 5 U.S.C. 804(3).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 10, 2012.

Steven Bradbury,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.157 [Removed]

■ 2. Remove § 180.157.

[FR Doc. 2012–4065 Filed 2–28–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0717; FRL–9334–2]

Pyroxasulfone; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of pyroxasulfone, including its metabolites and degradates, in or on field corn, pop corn, and sweet corn commodities. K–I Chemical U.S.A., Inc., requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective February 29, 2012. Objections and requests for hearings must be received on or before April 30, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0717. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–5218 email address: *stanton.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

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

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any

questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl*.

C. How can I file an objection or hearing request?

Under the FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0717 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 30, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2009–0717, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of January 6, 2010 (75 FR 864) (FRL–8801–5), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9F7560) by K–I Chemical U.S.A., Inc., c/o Landis International, Inc., P.O. Box 5126, Valdosta, GA 31603–5126. The petition requested that 40 CFR part 180 be amended by adding a section for the herbicide pyroxasulfone and establishing tolerances therein for residues of pyroxasulfone, 3-[[[5-(difluoromethoxy)-1-methyl-3-(trifluoromethyl)-1*H*-pyrazol-4-yl]methyl]sulfonyl]-4,5-dihydro-5,5-dimethylisoxazole, and its metabolites M-1, 5-difluoromethoxy-1-methyl-3-trifluoromethyl-1*H*-pyrazol-4-ylmethanesulfonic acid; M-3, 5-difluoromethoxy-1-methyl-3-trifluoromethyl-1*H*-pyrazol-4-carboxylic-acid; and M-25, (5-difluoromethoxy-3-trifluoromethyl-1*H*-pyrazol-4-yl)methanesulfonic acid in or on field corn kernel at 0.01 parts per million (ppm); field corn forage at 0.15 ppm; field corn stover at 0.15 ppm; field corn meal at 0.01 ppm; field corn grits at 0.01 ppm; field corn flour at 0.01 ppm; field corn starch at 0.01 ppm; field corn oil (wet and dry milled) at 0.01 ppm; sweet corn ears at 0.02 ppm; sweet corn forage at 0.15 ppm; sweet corn stover at 0.15 ppm; wheat grain at 0.02 ppm; wheat forage at 0.2 ppm; wheat straw at 0.2 ppm; soybean seed at 0.05 ppm; soybean forage at 1.0 ppm; soybean hay at 2.0 ppm; soybean meal at 0.05 ppm; soybean hulls at 0.02 ppm; and soybean refined oils at 0.01 ppm. That notice referenced a summary of the petition prepared by K–I Chemical U.S.A., Inc., the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised the tolerance expression, commodity terms, and tolerance levels for corn commodities. The Agency has also determined that the submitted data are not adequate to support tolerances on soybean or wheat commodities and is, therefore, not establishing tolerances on these commodities at this time. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for pyroxasulfone, including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with pyroxasulfone follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Pyroxasulfone acute toxicity to mammals is low by all routes of exposure. Subchronic and chronic oral toxicity testing of pyroxasulfone in mice, rats, and dogs produced a variety of adverse effects in several target organs. Effects seen in animal studies included cardiac toxicity (increased cardiomyopathy in mice and rats), liver toxicity (centrilobular hepatocellular hypertrophy, histopathological, and/or clinical pathological indicators), neurotoxicity characterized by axonal/myelin degeneration in the sciatic nerve (dog, mouse, and rat) and spinal cord sections (dog), skeletal muscle

myopathy, kidney toxicity (increased incidence of chronic progressive nephropathy in dogs and retrograde nephropathy in mice), urinary bladder mucosal hyperplasia, inflammation, and urinary bladder transitional cell papillomas (rats). Decreased body weight and enzyme changes were noted in some studies. Immunotoxicity studies in rats and mice showed no evidence of immunotoxic effects from pyroxasulfone.

Pyroxasulfone was moderately toxic to rats following a 4-week dermal exposure producing local inflammation and systemic effects of minimal to mild cardiac myofiber degeneration at the limit dose. No adverse effects were noted in a 28-day inhalation study at the highest-dose tested.

Pyroxasulfone did not exhibit developmental toxicity in the rat developmental toxicity study and exhibited only slight developmental toxicity in rabbits (reduced fetal weight and resorptions) at the limit dose. However, developmental effects were noted in post-natal day (PND) 21 offspring in the rat developmental neurotoxicity (DNT) study characterized as decreased brain weight and morphometric changes. Developmental effects in the rabbit developmental study and DNT study occurred in the absence of maternal toxicity, indicating potential increased quantitative susceptibility of offspring. In a reproductive toxicity in rats reduced pup weight and body weight gains during lactation occurred at similar or higher doses causing pronounced maternal toxicity (reduced body weight, body weight gain, and food consumption and increased kidney weight, cardiomyopathy, and urinary bladder mucosal hyperplasia with inflammation).

In cancer studies in mice and rats, renal tubular adenomas were observed in male mice and urinary bladder transitional cell papillomas were observed in male rats. The kidney adenomas in male mice were determined to be spontaneous and not treatment-related based on the following considerations:

1. Absence of any cytotoxicity (degeneration or individual cell necrosis) in studies ranging from 14 days to 18 months at doses up to 15,000 ppm.

2. Absence of cell regeneration leading to precursor lesions such as atypical tubular hyperplasia at all time points and doses up to 15,000 ppm.

3. Lack of exacerbation of chronic progressive nephropathy, a spontaneous disease in rodents that results in cell regeneration which can result in renal tubule tumors in chronic studies.

4. Lack of a clear dose response in the distribution of tumors between test substance treated groups.

The urinary bladder tumors seen in male rats were determined to be a threshold effect. Pyroxasulfone exposure causes the growth of crystals in the urinary tract with subsequent calculi formation resulting in cellular damage. Crystal formation in the absence of calculi is not associated with hyperplasia or urinary bladder tumors; therefore, the formation of urinary bladder calculi is the prerequisite for subsequent hyperplasia and neoplasia. In other words, urinary bladder tumors do not develop at doses too low to produce calculi. There is also a clear threshold of 1,000 ppm (42.55 milligrams/kilogram/day (mg/kg/day)) for development of calculi and tumorigenesis. The point of departure (POD) of 50 ppm (2.0 mg/kg/day) selected for chronic risk assessment is not expected to result in urinary bladder calculi formation, which is a prerequisite for subsequent hyperplasia and neoplasia. Therefore, the Agency has determined that the quantification of risk using a non-linear approach (i.e., Reference dose (RfD)) will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to pyroxasulfone. There is no concern for mutagenicity.

Specific information on the studies received and the nature of the adverse effects caused by pyroxasulfone as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Pyroxasulfone Human Health Risk Assessment for Use of New Active Ingredient Pyroxasulfone on Corn,'' p. 34, in docket ID number EPA–HQ–OPP–2009–0717.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological POD and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a RfD—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for pyroxasulfone used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR PYROXASULFONE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including infants and children and females 13–50 years of age).	NOAEL = 100 mg/kg/day ..... UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 1 mg/kg/day ..... aPAD = 1 mg/kg/day	Developmental neurotoxicity in rats LOAEL = 300 mg/kg/day based on decreased brain weight in both sexes, reduced thickness of the hippocampus, corpus callosum, and cerebellum in PND 21 female offspring.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR PYROXASULFONE FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Chronic dietary (All populations)	NOAEL= 2 mg/kg/day ..... UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.02 mg/kg/day ..... cPAD = 0.02 mg/kg/day	1 year chronic dog study LOAEL = 10 mg/kg/day based on impaired hind limb function, ataxia, hind limb twitching and tremors; clinical pathology: Increased creatine kinase, aspartate aminotransferase; axonal/myelin degeneration of the sciatic nerve and spinal cord sections.
Cancer (Oral, dermal, inhalation) ..	''Not Likely to be Carcinogenic to Humans'' at doses that do not cause crystals with subsequent calculi formation resulting in cellular damage of the urinary tract. Risk is quantified using a non-linear (i.e., RfD) approach.		

DNT = neurotoxicity study, FQPA SF = Food Quality Protection Act Safety Factor.
LOAEL = lowest-observed-adverse-effect-level. LOC = Levels of Concern.
mg/kg/day = milligram/kilogram/day. NOAEL = no-observed-adverse-effect-level.
PAD = population adjusted dose (a = acute, c = chronic). PND = post-natal day.
RfD = reference dose. UF_A = extrapolation from animal to human (interspecies).
UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to pyroxasulfone, EPA considered exposure under the petitioned-for tolerances on corn commodities only. EPA is not establishing the petitioned-for tolerances on soybean and wheat commodities and no other tolerances have previously been established for pyroxasulfone. EPA assessed dietary exposures from pyroxasulfone in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for pyroxasulfone. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intakes by Individuals (CSFII). As to residue levels in food, EPA assumed that 100% of field, pop and sweet corn commodities are treated with pyroxasulfone and that residues on these commodities are present at tolerance levels, adjusted upward to account for metabolites of concern (M-1, M-3, and M-25) that are not included in the tolerance expression.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA made the same assumptions (adjusted tolerance-level residues and 100 percent crop treated (PCT)) as in the acute dietary exposure assessment.

iii. *Cancer.* EPA determines whether quantitative cancer exposure and risk assessments are appropriate for a food-use pesticide based on the weight of the evidence from cancer studies and other relevant data. Cancer risk is quantified using a linear or nonlinear approach. If sufficient information on the carcinogenic mode of action is available, a threshold or non-linear approach is used and a cancer RfD is calculated based on an earlier noncancer key event. If carcinogenic mode of action data are not available, or if the mode of action data determines a mutagenic mode of action, a default linear cancer slope factor approach is utilized. Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to pyroxasulfone. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue or PCT information in the dietary assessment for pyroxasulfone. Tolerance level residues (adjusted upward to account for additional metabolites of concern) and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for pyroxasulfone in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of pyroxasulfone. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of pyroxasulfone for acute exposures are estimated to be 17 parts per billion (ppb) for surface water and 210 ppb for ground water. EDWCs of pyroxasulfone for chronic exposures for non-cancer assessments are estimated to be 3.2 ppb for surface water and 174 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 210 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 174 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Pyroxasulfone is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found pyroxasulfone to share a common mechanism of toxicity with any other substances, and pyroxasulfone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that pyroxasulfone does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for pre-natal and post-natal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Pre-natal and post-natal sensitivity.* The pre-natal and post-natal toxicity database for pyroxasulfone includes developmental toxicity studies in rats and rabbits, a DNT study in rats, and a 2-generation reproduction toxicity study in rats. As discussed in Unit III.A, evidence of increased susceptibility of fetuses and offspring was seen in the DNT study and developmental toxicity study in rabbits following *in utero* or post-natal exposure to pyroxasulfone. No increased susceptibility was seen in the rat developmental or reproduction toxicity studies. In rabbits, developmental toxicity was only seen at the limit dose of 1,000 mg/kg/day as reduced fetal weight and increased fetal resorptions with a NOAEL of 500 mg/kg/day for these effects, compared to no maternal toxicity at these doses. In a DNT study in rats, offspring toxicity (decreased brain weight and morphometric changes on PND 21) was seen at 300 mg/kg/day compared to no maternal toxicity at 900 mg/kg/day. The degree of concern for the increased susceptibility seen in these studies is low and there are no residual uncertainties based on the following considerations:

i. The increased susceptibility is occurring at high doses.

ii. NOAELs and LOAELs have been identified for all effects of concern, and thus a clear dose response has been well defined.

iii. The PODs selected for risk assessment are protective of the fetal/offspring effects.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for pyroxasulfone is complete.

ii. Pyroxasulfone is a neurotoxic chemical and there is evidence of increased susceptibility of offspring with regard to neurotoxic effects in the rat DNT study. There is also evidence of increased susceptibility of fetuses/offspring with regard to non-neurotoxic effects in the rabbit developmental toxicity study. However, the concern for the increased susceptibility is low and EPA did not identify any residual uncertainties after establishing toxicity endpoints and traditional uncertainty factors (UFs) to be used in the risk assessment for pyroxasulfone.

iii. There are no residual uncertainties in the exposure database. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues (adjusted upward to account for additional metabolites of concern not included in the tolerance expression), and EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to pyroxasulfone in drinking water. These assessments will not underestimate the exposure and risks posed by pyroxasulfone.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute population adjusted dose (aPAD) +and chronic population adjusted dose (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to pyroxasulfone will occupy 4.2% of the aPAD for infants less than 1 year old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to pyroxasulfone from food and water will utilize 60% of the cPAD for infants less than 1 year old, the population group receiving the greatest exposure. There are no residential uses for pyroxasulfone.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). A short-term adverse effect was identified; however, pyroxasulfone is not registered for any use patterns that would result in short-term residential exposure. Short-term risk is assessed based on short-term residential exposure plus chronic dietary exposure. Because there is no short-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short-term risk for pyroxasulfone.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, pyroxasulfone is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term

risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for pyroxasulfone.

5. *Aggregate cancer risk for U.S. population.* As explained in Unit III.A., the Agency has determined that the quantification of risk using a non-linear (i.e., RfD) approach will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to pyroxasulfone. Therefore, based on the results of the chronic risk assessment discussed in Unit III.E.2., pyroxasulfone is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure pyroxasulfone residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (a liquid chromatography/mass spectrometry/mass spectrometry (LC/MS/MS) method) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov*.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for pyroxasulfone.

C. Revisions to Petitioned-For Tolerances

The petitioner proposed tolerances for residues of pyroxasulfone on corn, soybean, and wheat commodities. EPA is not establishing the proposed tolerances on soybean and wheat commodities at this time due to inadequate supporting data. In the case of soybeans, the residue analyses from the field trials did not measure the major metabolite M-28, which comprised approximately 50% of the total residue in soybean metabolism studies. Without data on M-28, an appropriate tolerance level for soybean cannot be determined. The submitted data for wheat were collected from field trials conducted in Australia and, therefore, are not considered to be geographically representative of wheat growing areas of the United States. Additionally, EPA requires that data be collected on wheat hay, and hay data were not collected in any of the submitted field trials. Further, the petitioner did not conduct processing studies with wheat, so the Agency cannot determine whether separate tolerances are needed for the processed commodities of wheat. The petitioner must address these deficiencies before the proposed soybean and wheat tolerances can be established.

The petitioner proposed tolerances for residues of pyroxasulfone and its metabolites M-1, M-3, and M-25 on ''field corn grain,'' ''field corn forage,'' ''field corn stover,'' ''sweet corn ears,'' ''sweet corn forage,'' ''sweet corn stover,'' and several processed field corn commodities (grits, meal, flour, starch, and oil). EPA has concluded that the metabolites M-1, M-3, and M-25 should be included as residues of concern for risk assessment purposes for all corn commodities; however, to harmonize with its global review partners, Australia and Canada, U.S. tolerances for corn grain commodities will be enforced by measuring only parent pyroxasulfone and the M-3 metabolite. Tolerances for corn forage and stover will be enforced by measuring the parent pyroxasulfone and all three metabolites. EPA has determined that the proposed tolerances on processed field corn commodities (grits, meal, flour, starch, and oil) are unnecessary, since residues on these commodities are not expected to exceed those in the raw agricultural commodities (RACs) and thus will be covered by the RAC tolerances.

EPA has revised the commodity terms for all field and sweet corn commodities and is establishing tolerances on pop corn commodities, separate from those on field corn, as follows to agree with the Agency's Food and Feed Vocabulary: ''Corn, field, grain;'' ''Corn, field, forage;'' ''Corn, field, stover;'' ''Corn sweet, kernel plus cob with husks removed;'' ''Corn, sweet, forage;'' ''Corn, sweet, stover;'' ''Corn, pop, grain;'' ''Corn, pop, stover.''

Finally, EPA has revised the tolerance levels for corn grain and forage commodities as follows based on analysis of the field trial data using the tolerance MRL calculator in accordance with the Organization for Economic Cooperation and Development's ''MRL Calculator User Guide Standard Operating Procedure (SOP).'' Field (and pop) corn grain was increased from 0.01 ppm to 0.015 ppm. Field corn forage was decreased from 0.15 ppm to 0.06 ppm. Sweet corn grain was decreased from 0.02 ppm to 0.015 ppm. Sweet corn forage was decreased from 0.15 ppm to 0.10 ppm.

V. Conclusion

Therefore, tolerances are established for residues of pyroxasulfone, 3-[[[5-(difluoromethoxy)-1-methyl-3-(trifluoromethyl)-1*H*-pyrazol-4-yl]methyl]sulfonyl]-4,5-dihydro-5,5-dimethylisoxazole, including its metabolites and degradates, as set forth in the regulatory text.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition

under FFDCA section 408(d) such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 15, 2012.

Steven Bradbury,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.659 is added to subpart C to read as follows:

§ 180.659 Pyroxasulfone; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the herbicide pyroxasulfone, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of pyroxasulfone, 3-[[[5-(difluoromethoxy)-1-methyl-3-(trifluoromethyl)-1*H*-pyrazol-4-yl]methyl]sulfonyl]-4,5-dihydro-5,5-dimethylisoxazole, and its metabolite, 5-(difluoromethoxy)-1-methyl-3-(trifluoromethyl)-1*H*-pyrazol-4-carboxylic acid (M-3), calculated as the stoichiometric equivalent of pyroxasulfone, in or on the commodity.

Commodity	Parts per million
Corn, field, grain	0.015
Corn, pop, grain	0.015
Corn, sweet, kernel plus cob with husks removed	0.015

(2) Tolerances are established for residues of the herbicide pyroxasulfone, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of pyroxasulfone, 3-[[[5-(difluoromethoxy)-1-methyl-3-(trifluoromethyl)-1*H*-pyrazol-4-yl]methyl]sulfonyl]-4,5-dihydro-5,5-dimethylisoxazole, and its metabolites, 5-(difluoromethoxy)-1-methyl-3-(trifluoromethyl)-1*H*-pyrazol-4-yl]methanesulfonic acid (M–1); 5-(difluoromethoxy)-1-methyl-3-(trifluoromethyl)-1*H*-pyrazol-4-carboxylic acid (M-3); and [5-(difluoromethoxy)-3-(trifluoromethyl)-1*H*-pyrazol-4-yl]methanesulfonic acid (M-25), calculated as the stoichiometric equivalent of pyroxasulfone, in or on the commodity.

Commodity	Parts per million
Corn, field, forage	0.06
Corn, field, stover	0.15
Corn, pop, stover	0.15
Corn, sweet, forage	0.10
Corn, sweet, stover	0.15

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 2012–4478 Filed 2–28–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126522–0640–02]

RIN 0648–XB044

Fisheries of the Economic Exclusive Zone Off Alaska; Shallow-Water Species by Amendment 80 Vessels in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by Amendment 80 vessels in the Gulf of Alaska (GOA). This action is necessary because the first seasonal apportionment of the sideboard limit for 2012 Pacific halibut prohibited species catch (PSC) specified for the shallow-water species fishery by Amendment 80 vessels in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 24, 2012, through 1200 hrs, A.l.t., April 1, 2012.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

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

The first seasonal allowance of the 2012 Pacific halibut PSC limit specified for the shallow-water species fishery by Amendment 80 vessels in the GOA is 10 metric tons as established by the final 2011 and 2012 harvest specifications for groundfish of the GOA (76 FR 11111, March 1, 2011) for the period 1200 hrs, A.l.t., January 20, 2012, through 1200 hrs, A.l.t., April 1, 2012.

In accordance with § 679.20(d)(1)(vi)(C)(*2*), the Administrator, Alaska Region, NMFS, has determined that the first seasonal apportionment of the 2012 Pacific halibut PSC limit specified for the shallow-water species fishery by Amendment 80 vessels in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by Amendment 80 vessels subject to sideboard limits in the GOA. The species and species groups that comprise the shallow-water species fishery are pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates, and ''other species.''

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

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the shallow-water species fishery by Amendment 80 vessels subject to sideboard limits using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 23, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: February 24, 2012.

Steven Thur,

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

[FR Doc. 2012–4834 Filed 2–24–12; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111213751–2102–02]

RIN 0648–XB038

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock in the Bering Sea and Aleutian Islands

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

ACTION: Temporary rule.

SUMMARY: NMFS is reallocating the projected unused amounts of the Aleut Corporation's pollock directed fishing allowance and the Community Development Quota from the Aleutian Islands subarea to the Bering Sea subarea directed fisheries. These actions are necessary to provide opportunity for harvest of the 2012 total allowable catch of pollock, consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 29, 2012, until 2400 hrs, A.l.t., December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

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

In the Aleutian Islands subarea, the portion of the 2012 pollock total allowable catch (TAC) allocated to the Aleut Corporation's directed fishing allowance (DFA) is 15,500 metric tons (mt) and the Community Development Quota (CDQ) is 1,900 mt as established by the final 2012 and 2013 harvest specifications for groundfish in the BSAI (77 FR 10669, February 23, 2012).

As of February 23, 2012, the Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that 10,500 mt of Aleut Corporation's DFA and 1,900 mt of pollock CDQ in the Aleutian Islands subarea will not be harvested. Therefore, in accordance with § 679.20(a)(5)(iii)(B)(*4*), NMFS reallocates 10,500 mt of Aleut Corporation's DFA and 1,900 mt of pollock CDQ from the Aleutian Islands subarea to the 2012 Bering Sea subarea allocations. The 1,900 mt of pollock CDQ is added to the 2012 Bering Sea CDQ DFA. The remaining 10,500 mt of pollock is apportioned to the AFA Inshore sector (50 percent), AFA catcher/processor sector (40 percent), and the AFA mothership sector (10 percent). The 2012 pollock incidental catch allowance remains at 32,400 mt. As a result, the harvest specifications for pollock in the Aleutian Islands subarea included in the final 2012 and 2013 harvest specifications for groundfish in the BSAI (77 FR 10669, February 23, 2012) are revised as follows: 5,000 mt to Aleut Corporation's DFA and 0 mt to CDQ pollock. Furthermore, pursuant to § 679.20(a)(5), Table 3 of the final 2012 and 2013 harvest specifications for groundfish in the BSAI (77 FR 10669, February 23, 2012) is revised to make 2012 pollock allocations consistent with this reallocation. This reallocation results in adjustments to the 2012 Aleut Corporation and CDQ pollock allocations established at § 679.20(a)(5).

TABLE 3—FINAL 2012 AND 2013 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

Area and sector	2012 Allocations	2012 A season [1]		2012 B season [1]	2013 Allocations	2013 A season [1]		2013 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA		A season DFA	SCA harvest limit [2]	B season DFA
Bering Sea subarea	1,212,400	n/a	n/a	n/a	1,201,900	n/a	n/a	n/a
CDQ DFA	121,900	48,760	34,132	73,140	120,190	48,076	33,653	72,114
ICA [1]	32,400	n/a	n/a	n/a	32,451	n/a	n/a	n/a
AFA Inshore	529,050	211,620	148,134	317,430	524,629	209,852	146,896	314,778
AFA Catcher/Processors [3]	423,240	169,296	118,507	253,944	419,703	167,881	117,517	251,822
Catch by C/Ps	387,265	154,906	n/a	232,359	384,029	153,611	n/a	230,417
Catch by CVs [3]	35,975	14,390	n/a	21,585	35,675	14,270	n/a	21,405
Unlisted C/P Limit [4]	2,116	846	n/a	1,270	2,099	839	n/a	1,259
AFA Motherships	105,810	42,324	29,627	63,486	104,926	41,970	29,379	62,956
Excessive Harvesting Limit [5]	185,168	n/a	n/a	n/a	183,620	n/a	n/a	n/a
Excessive Processing Limit [6]	317,430	n/a	n/a	n/a	314,778	n/a	n/a	n/a
Total Bering Sea DFA	1,058,100	423,240	296,268	634,860	1,049,259	419,703	293,792	629,555
Aleutian Islands subarea [1]	6,600	n/a	n/a	n/a	19,000	n/a	n/a	n/a
CDQ DFA	0	0	n/a	0	1,900	760	n/a	1,140
ICA	1,600	800	n/a	800	1,600	800	n/a	800
Aleut Corporation	5,000	15,500	n/a	0	15,500	15,500	n/a	0
Bogoslof District ICA [7]	150	n/a	n/a	n/a	150	n/a	n/a	n/a

[1] Pursuant to § 679.20(a)(5)(i)(A), the BS subarea pollock, after subtracting the CDQ DFA (10 percent) and the ICA (3 percent), is allocated as a DFA as follows: inshore sector—50 percent, catcher/processor sector (C/P)—40 percent, and mothership sector—10 percent. In the BS subarea, 40 percent of the DFA is allocated to the A season (January 20–June 10) and 60 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(*2*)*(i)* and *(ii),* the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second the ICA (1,600 mt), is allocated to the Aleut Corporation for a directed pollock fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

[2] In the BS subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If less than 28 percent of the annual DFA is taken inside the SCA before April 1, the remainder will be available to be taken inside the SCA after April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(*A*)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(*A*)(*7*), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

[7] The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only and are not apportioned by season or sector.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of AI pollock. Since the pollock fishery is currently open, it is important to immediately inform the industry as to the final Bering Sea subarea pollock allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery; allow the industry to plan for the fishing season and avoid potential disruption to the fishing fleet as well as processors; and provide opportunity to harvest increased seasonal pollock allocations while value is optimum. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 23, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: February 24, 2012.

Steven Thur,

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

[FR Doc. 2012–4836 Filed 2–24–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 40
Wednesday, February 29, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Doc. No. AMS–NOP–11–0063; NOP–11–11PR]

RIN 0581–AD18

National Organic Program; Proposed Amendment to the National List of Allowed and Prohibited Substances (Livestock)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: This document contains a correction to the proposed rule which was published on February 6, 2012 (77 FR 5717). The proposed rule relates to revising the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List) to reduce the maximum levels for synthetic methionine currently allowed in organic poultry production after October 1, 2012. This document will remove an incorrect reference to a date in the proposed modification to our regulation.

FOR FURTHER INFORMATION CONTACT: Melissa Bailey, Ph.D., Director, Standards Division, Telephone: (202) 720–3252; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION:

Background

On February 6, 2012, the Agricultural Marketing Service published a proposed rule (77 FR 5717) to reduce the maximum levels of synthetic methionine that may be provided to organic poultry after October 1, 2012. This action addressed the recommendation of the National Organic Standards Board to permit the use of synthetic methionine at the following maximum levels per ton of feed after October 1, 2012: laying and broiler chickens—2 pounds; turkeys and all other poultry—3 pounds. As published, the proposed modification to 7 CFR § 205.603(d)(1) contains the date ''October 2, 1012.'' This is an incorrect reference to a date and therefore should not be included in the proposed regulatory language. This document corrects the regulatory language of the proposed rule.

1. On page 5721, in the second column, § 205.603 paragraph (d)(1) is corrected to read as follows:

§ 205.603 Synthetic substances allowed for use in organic livestock production.

* * * * *

(d) * * *

(1) DL-Methionine, DL-Methionine—hydroxy analog, and DL-Methionine—hydroxy analog calcium (CAS #'s 59–51–8, 583–91–5, 4857–44–7, and 922–50–9)—for use only in organic poultry production at the following maximum levels of synthetic methionine per ton of feed: laying and broiler chickens—2 pounds; turkeys and all other poultry—3 pounds.

Dated: February 16, 2012.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2012–4755 Filed 2–28–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1033

[Docket No. AO–11–0333; AMS–DA–11–0067; DA–11–04]

Milk in the Mideast Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; recommended decision.

SUMMARY: This decision recommends adoption of a proposal to amend the Pool Plant provisions of the Mideast Federal milk marketing order to reflect that distributing plants physically located within the marketing area with a Class I utilization of at least 30 percent, and with combined route disposition and transfers of at least 50 percent distributed into Federal milk marketing areas, would be regulated as a Pool Distributing Plant under the terms of the order.

DATES: Comments must be submitted on or before April 30, 2012.

ADDRESSES: All comments received will be posted without change, including any personal information provided. Comments (four copies) must be filed with the Hearing Clerk, United States Department of Agriculture, STOP 9200–Room 1031, 1400 Independence Avenue SW., Washington, DC 20250–1031. Comments may be submitted for public viewing using the electronic process available at the Federal eRulemaking portal: *http://www.regulations.gov.* Reference should be made to the title of the action and docket number.

FOR FURTHER INFORMATION CONTACT: Erin C. Taylor, Order Formulation and Enforcement Division, USDA/AMS/Dairy Programs, STOP 0231–Room 2963, 1400 Independence Avenue SW., Washington, DC 20250–0231, (202) 720–7183, email address: *erin.taylor@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This decision recommends adoption of amendments that will more adequately define the plants, and the producer milk associated with those plants, that serve the fluid needs of the Mideast market and therefore which producers should share in the additional revenue arising from fluid milk sales.

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (the Act), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with USDA a petition stating that the order, any provision of the order, or any obligation

imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the U.S. Department of Agriculture (USDA or Department) would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review USDA's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities.

For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farms. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During October 2011, the time of the hearing, there were 6,651 dairy farms pooled on the Mideast order. Of these, approximately 6,169 dairy farms (or 92.8 percent) were considered small businesses.

During October 2011, there were 51 handler operations associated with the Mideast order (25 fully regulated handlers, 8 partially regulated handlers, 2 producer-handlers and 16 exempt handlers). Of these, approximately 38 handlers (or 74.5 percent) were considered small businesses.

The Pool Plant provisions of the Mideast order define which plants have an association with serving the fluid milk market demand of the Mideast marketing area, and therefore determine the producers and the producer milk that can participate in the marketwide pool and share in the Class I market revenues. The proposed amendments could fully regulate handlers that currently fall under partial regulation. As a result, these handlers would be required to account to the Mideast order marketwide pool. Consequently, all producers whose milk is pooled and priced under the terms of the Mideast order would benefit from the additional revenue contributed to the marketwide pool by the newly-regulated distributing plant. The Department anticipates that while these additional monies would be shared with all producers serving the market, the proposed amendments would not have a significant economic impact on a substantial number of small entities.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). It was determined that the proposed amendment would have no impact on reporting, recordkeeping, or other compliance requirements because it would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This recommended decision does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the approved forms are routinely used in most business transactions. The forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Interested parties are invited to submit comments on the probable regulatory and informational impact of this proposed rule on small entities.

Prior Documents in This Proceeding

Notice of Hearing: Issued September 2, 2011; published September 8, 2011 (76 FR 55608).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Mideast marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, STOP 9200–Room 1031, 1400 Independence Avenue SW., Washington, DC 20250–9200, by April 30, 2012. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)). The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. Some evidence was received that specifically addressed these issues and some of the evidence encompassed entities of various sizes.

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Mideast marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The proposed amendments set forth below are based on the record of a public hearing held in Cincinnati, Ohio pursuant to a notice of hearing issued September 2, 2011. At the hearing, evidence was also gathered to determine whether market conditions exist to warrant consideration of the proposal on an emergency basis.

The material issues on the record of hearing relate to:

1. Amendment of the Pool Plant Definition

Findings and Conclusions

This decision recommends adoption of a proposal, published in the Notice of Hearing as Proposal 1, with two modifications: one proposed at the hearing and one conforming change made by AMS. Proposal 1, as published, would amend the Pool Plant provisions

of the Mideast order so that any plant physically located within the marketing area would be fully regulated by the Mideast order if 50 percent of the plant's total combined route disposition and transfers falls within Federal milk marketing area boundaries and not more than 25 percent of the plant's route disposition is within any single Federal marketing area. This decision recommends striking the 25 percent in-area route disposition qualifier from the initial proposal, as proposed by Superior Dairy, Inc. (Superior Dairy) during the hearing. As such, any distributing plant physically located in the Mideast milk marketing area with combined total route distribution and transfers of 50 percent or more into Federal milk marketing areas would be regulated by the terms of the Mideast order. (As discussed below, a plant meeting this new standard could still become pooled by another order if it has total route distribution of at least 50 percent into one Federal marketing area for 3 consecutive months (as provided for in § 1033.7(h)(3)).) Additionally, the regulatory text recommended in this decision has been modified by AMS to add clarifying text to ensure consistency with current order provisions.

The Pool Plant provisions of the Mideast order define how plants demonstrate an adequate association with the fluid market, and therefore the milk associated with those plants that is pooled and priced under the terms of the order. The Pool Distributing Plant standard of the Mideast order first requires a plant to meet a minimum Class I utilization, which is the percentage of fluid milk physically received at the plant that is distributed or transferred as Class I (fluid) products. The Class I utilization standard for the Mideast Federal Milk Marketing Order (FMMO) is 30 percent. The plant must also show a reasonable association with the order's Class I market; that association is determined by the percentage of the plant's total Class I route disposition that is distributed or transferred within the marketing area, or ''in-area'' route disposition. In the Mideast order, 25 percent of the plant's Class I route disposition must be to outlets within the Mideast marketing area. If a plant meets both the 30 percent Class I utilization and the 25 percent ''in-area'' route disposition standard the plant will be a fully regulated distributing plant. Once fully regulated, a distributing plant must account to the marketwide pool at classified use values and pay its producers at least the order's minimum blend price.

A witness appeared on behalf of the proponents of Proposal 1, Dairy Farmers of America, Inc., Continental Dairy Products, Inc., Dairylea Cooperative Inc., Erie Cooperative Association, Foremost Farms USA Cooperative, Inc., Michigan Milk Producers Association, Inc., National Farmers Organization, Inc., Prairie Farms Dairy, Inc., and White Eagle Cooperative Association (collectively referred to as DFA *et al.*), in support of modifying the Pool Plant provisions of the Mideast milk marketing order. The witness stated that DFA *et al.* are all member-owned Capper Volstead cooperatives that collectively market the majority of the milk in the Mideast milk marketing area.

The DFA *et al.* witness estimated that more than 85 percent of the nearly 6,974 producers whose milk is pooled on the Mideast order are small businesses. The witness was of the opinion that the disorderly marketing conditions resulting from what they consider to be inadequate Pool Plant provisions are harming these small businesses and that failing to address these issues would be detrimental to their dairy farmer members.

The DFA *et al.* witness testified that the intent of FMMOs are to create and preserve orderly marketing conditions by, among other things, maintaining classified pricing and a marketwide pooling system in which all handlers pay uniform minimum classified prices based on their milk utilization and producers receive a minimum uniform blend price. The witness testified that when marketwide pooling and classified pricing are jeopardized, FMMOs should be amended to maintain order in the market.

The DFA *et al.* witness explained why they proposed a change to the Pool Plant provisions of the Mideast order. The witness testified that a large fluid milk bottling plant owned by Superior Dairy, located in Canton, Ohio, which had previously been fully regulated by either the Mideast or Northeast Federal milk orders, was able to become partially regulated under the current provisions of both orders. The witness testified that Superior Dairy's Canton plant was able to avoid full regulation by transferring packaged product ultimately bound for distribution in the Northeast marketing area through a smaller sister plant located in Wauseon, Ohio, thereby reducing the route disposition from its Canton plant below the 25 percent in-area route disposition requirement.

The DFA *et al.* witness was of the opinion that the Pool Plant provisions of the Mideast order allow Superior Dairy to avoid full regulation and consequently cause disorder in the market in two primary ways: (1) Producers who incur the additional costs of servicing the order's Class I market are not guaranteed a uniform blend price, and (2) similarly situated handlers are not assured the same raw milk costs. The witness reviewed the producer payment options available to partially regulated plants and explained how the ability of plants like Superior Dairy's plant to avoid full regulation causes disorder. The witness elaborated that one of the producer payment options, commonly known as the ''Wichita Option,'' for partially regulated plants requires plants to pay its producer suppliers, in aggregate, minimum Federal order classified values. The witness noted that while a Partially Regulated Distributing Plant (PRDP) has to pay aggregated classified values to it producers, it is not required to pay its producers uniformly on an individual basis. The witness said that if a plant demonstrates to the Market Administrator that this aggregate value requirement is met, then no additional payment into the order's producer settlement fund (PSF) is necessary. The witness testified that when partially regulated plants opt to pay their producer suppliers the minimum Federal order classified values, in aggregate, the plant can include over-order premiums in that calculation, whereas a fully regulated handler cannot. In orders such as the Mideast order, where significant over-order premiums are necessary to obtain a milk supply, the witness noted, this cost savings could be significant for a plant. The witness said that this savings could be used by the plant to increase market share for fluid milk sales, or procure additional milk supplies to gain a competitive advantage with similarly situated, fully regulated pool handlers who are required to pay classified milk use values to the PSF (not including over-order premiums) and minimum blend prices to dairy farmers.

The DFA *et al.* witness attempted to estimate the amount of money that Superior Dairy was able to retain from January of 2010 to July of 2011 by avoiding full regulation on the Mideast order. The witness was of the opinion that Superior Dairy was able to retain approximately $0.93 per hundredweight (cwt) on average, the potential ''advantage'' over fully regulated handlers, equal to a cumulative monthly total savings averaging just under $289,000 (based on an assumed monthly plant volume of 30 million pounds). The witness added that a similarly situated fully regulated handler would have paid this money into the order's

PSF to be shared with all producers servicing the market. However, Superior Dairy's partially regulated status allowed it to retain the money and, as a result, minimum blend prices to all the Mideast order's pool producers were reduced.

The DFA *et al.* witness asserted that, over the years, Federal orders have been amended to reduce the disorder resulting from plants being regulated in areas different from the area in which they procure milk. The witness referred to a 1988 decision, ''Milk in the Ohio Valley and Louisville-Lexington-Evansville Marketing Areas'' (53 FR 14804), that amended Pool Distributing Plant standards to correct a disorderly marketing condition which caused similarly situated plants within the same competitive area to have different raw milk costs. In this case, a plant that was located in the Louisville-Lexington-Evansville marketing area, but had most of its route disposition in another marketing area, was regulated by the Louisville-Lexington-Evansville marketing order. This change was premised on the idea that a plant should be regulated in the marketing area in which there is a reasonable assurance that it will have available an adequate supply of producer milk, which therefore promotes uniformity of prices to producers within the procurement area of the plant. The witness stated that the market disorder created by Superior Dairy's partially regulated status is similar to the issues addressed in the referenced 1988 Decision, and again urged the Department to recommend the adoption of Proposal 1 as an appropriate solution.

The DFA *et al.* witness concluded by requesting that the Department consider this proposal on an emergency basis. The witness said that DFA *et al.* supplies milk to both Superior Dairy and other fully regulated plants. According to the witness, the difference in regulatory status between its buyers causes disorderly marketing conditions that directly impact its members. Additionally, Superior Dairy's competitive advantage due to its partially regulated status lowers the value of the order's marketwide pool, thereby reducing the minimum blend price to all the order's producers each month that Superior Dairy is not fully regulated.

A second witness appeared on behalf of DFA *et al.* in support of Proposal 1. The witness reiterated the testimony of an earlier witness concerning the disorderly marketing conditions resulting from the Superior Dairy Canton plant becoming partially regulated. The witness said that the Department had taken steps in the past to restore order within the markets when there was evidence of plants engaging in uneconomic milk shipments and other business practices solely to avoid becoming fully regulated. The witness referenced regulatory changes made as a part of Federal order reform that closed loopholes that could be used to avoid regulation. Specifically, the witness highlighted amendments that prevented plants from using diverted milk volumes as part of the calculation used to determine eligibility for pooling.[1] The witness implied that the Department addressed this loophole to help maintain an orderly market.

A witness representing Dairy Farmers of America (DFA) appeared in support of Proposal 1. The witness purported to have first-hand knowledge of the Wauseon, Ohio, plant before it was purchased by Superior Dairy. The witness testified that the plant had been closed by two prior owners who found the facility to be inefficient and economically nonviable. The witness claimed that the facility was the smallest in the region and that no other plants of similar size and/or logistical constraints existed in the area. The witness described in detail what they perceived to be logistical complications resulting from the limited size of the Wauseon plant. These complications, the witness asserted, were evidence that the plant was being used by Superior Dairy to facilitate the uneconomic movement of milk in an attempt to avoid regulation. The witness acknowledged that they had not entered into the Wauseon plant since Superior Dairy's acquisition of the facility and had no knowledge of Superior Dairy's internal business processes.

A witness appeared on behalf of Michigan Milk Producers Association, Inc. (MMPA) in support of Proposal 1. MMPA is a member-owned Capper Volstead cooperative which pools the majority of its producer milk on the Mideast order. The witness stated that MMPA was a supporter of Federal orders in that they provide equality for producers and an orderly market for handlers.

The MMPA witness stated that the change in regulatory status of Superior Dairy's Canton plant was a concern that raised questions of competitive equity between similarly situated handlers. The witness also referenced an earlier witness' testimony that included an analysis revealing a possible competitive advantage that a partially regulated plant could capture in addition to examining the degree of inequity that could exist amongst similarly situated plants.

The MMPA witness was of the opinion that Superior Dairy's purchase of a smaller distributing plant approximately 200 miles away in Wauseon, Ohio, was a business decision made to avoid full regulation under Federal orders by transferring packaged product from the larger Canton plant northwest to the smaller Wauseon plant and later transporting this product back east to its final destination. The witness stated that this uneconomic movement of product was an attempt to avoid full regulation of the larger distributing plant.

A witness from the Southern Marketing Agency (SMA) spoke in support of Proposal 1. SMA is a Capper-Volstead marketing agency comprised of seven cooperative members operating in the southern United States. The witness explained that Superior Dairy was unique from other handlers due to its broad distribution footprint which spanned the Northeast, Appalachian, Florida, Southeast, Central, and Mideast milk marketing areas. The witness opined that few other handlers of conventional fluid milk products had such expansive route disposition. The witness asserted that Superior Dairy was in direct competition with other Mideast fully regulated handlers for farm milk supplies.

The SMA witness testified that recent shifts in the manner of Federal order regulation of Superior Dairy has created market disorder. The witness testified that when a large bottling plant is able to escape full regulation by the order from which its raw milk supply is procured and utilized at the plant, dairy farmers and cooperative associations face difficulties in raw milk procurement planning. The witness explained how seasonal changes in demand for Class I milk products create the need for each plant to maintain a reserve supply to ensure that their Class I needs are always met. The witness said that cooperatives routinely schedule milk deliveries into certain plants to ensure that reserve requirements are met and producers remain qualified to participate in the order's marketwide pool. The witness described how the pooling of necessary reserve milk supplies is complicated when a large plant such as Superior Dairy changes its regulatory status, or regulated by a Federal order distant from its milk procurement areas. The witness further explained that because pooling requirements vary between orders, a situation can arise where a plant switches the order it is regulated on, but producers who normally supply and are

[1] 64 FR 16025.

pooled by the plant are not automatically qualified to be pooled on the new order. The witness explained how this misallocation of reserve supplies to handlers could unintentionally leave producers who regularly bear the cost of supplying the Class I market excluded from the order's marketwide pool.

The SMA witness testified that the pooling of a plant in an order distant from the plant's physical location creates market disorder. The witness explained how the Department uses ''lock-in'' type provisions to address the wide route disposition patterns of extended shelf life (ESL) products. The witness testified that Federal orders regulate plants that manufacture ESL products in the order that the plant is located, regardless of where the majority of milk is sold. The witness testified that the pooling of ESL manufacturers in this manner prevents market disorder that would result from the plant switching regulation between orders. The witness opined that similar regulation of plants similar to Superior Dairy would prevent disorderly marketing conditions.

The SMA witness asserted that Superior Dairy has a clear advantage over its fully regulated competitors since it is able to avoid payments into any PSF under partial regulation. The witness testified that the uneconomic movement of milk from Superior's Canton facility west to its Wauseon facility for subsequent distribution in the Northeast order was designed to limit the route disposition of Superior's Canton plant into any marketing area, thereby avoiding full regulation. The witness testified that this practice should be prohibited to prevent the potential for further disorderly marketing conditions.

A witness testifying on behalf of Superior Dairy, Inc. spoke in opposition to Proposal 1. According to the witness, Superior Dairy is a handler of Class I fluid milk products processing about 40 million pounds of milk per month at its two facilities. The witness argued that the change in regulatory status of Superior Dairy between the Northeast and Mideast FMMOs and between partial and full regulation does not disrupt marketing conditions in sufficient measure to warrant regulatory change.

The Superior Dairy witness said the majority of milk processed by the company is supplied by DFA. The witness testified that DFA charged PRDPs such as Superior Dairy classified prices plus an over-order premium based on the plant's raw milk utilization, as per industry practice. The witness noted that the company had an 82 percent Class I utilization and approximately 90 percent of its route distribution was in Federal milk marketing areas. The witness testified that Superior Dairy was regulated by the Mideast order until March 2010, the Northeast order from April 2010 to February 2011, and partially regulated on both orders since March 2011.

The Superior Dairy witness testified that the company was able to increase sales in recent years by implementing new packaging technology. The witness testified that the new packaging technology allowed the company to gain large clients whose distribution networks were substantially larger than that of traditional buyers. The witness noted that the result of that growth was increased sales into, and subsequent regulation by, the Northeast milk marketing order in April 2010. The witness explained that Class I sales to outlets within the boundaries of the Northeast marketing area increased to 28 percent of total Class I volume sold, which decreased the percentage of its Class I sales within then Mideast marketing area to around 20 percent. The witness testified that regulation on the Northeast marketing order required that Superior Dairy pay into the Northeast PSF, rather than the Mideast PSF, which in turn required a larger monthly pool obligation to the plant. The witness elaborated that the change in regulation from the Mideast order to the Northeast order harmed Superior Dairy's producers since the Northeast blend price, when adjusted to their location in Canton, Ohio, was $0.13 per cwt lower than the Mideast blend price. The witness said that this required Superior Dairy to increase the over order premiums paid to its Mideast raw milk suppliers to remain competitive while also paying into the Northeast PSF, thus increasing its total raw milk procurement costs. The witness noted that Superior Dairy preferred to be regulated by the Mideast order, rather than the Northeast, but was unable to expand their route distribution sufficiently in the Mideast marketing area to remain regulated by that order.

The Superior Dairy witness explained how the Canton plant came to be partially regulated as opposed to being fully regulated on the Northeast or Mideast order. The witness testified that the company purchased a small plant in Wauseon, Ohio in early 2011. The witness affirmed that the addition of this facility allowed Superior Dairy to decrease route distribution from its Canton plant to below 25 percent in both the Northeast and the Mideast marketing areas, allowing it to become partially regulated on both orders. The witness also added that the new facility was of interest to the company in that it allowed them to expand its procurement area for raw milk into Western Ohio and Southern Michigan without adding administrative personnel.

The Superior Dairy witness testified that one of the Federal order provisions available to handlers with limited route disposition into Federal order areas, sometimes referred to as the ''Wichita Option,'' requires handlers to pay dairy farmers, in aggregate, the Federal order minimum classified values. The witness argued that the partial regulation of Superior Dairy does not provide any competitive sales advantage over its fully regulated competitors. However, the witness said that Federal order provisions for PRDP do not promote equity amongst dairy farmers since the price received by dairy farmers for raw milk sold to a partially regulated plant can differ from the price of milk sold to a fully regulated plant. The witness testified that if a handler is partially regulated under the ''Wichita Option,'' they essentially operate as an individual handler pool. The witness explained how producers who ship milk to a PRDP with a higher than market average Class I utilization can receive a higher price than producers who ship milk to a fully regulated plant and are in turn paid the order's minimum blend price. The witness testified that Superior Dairy's producer suppliers are, in fact, paid an ''in-plant'' blend price that is higher than the Mideast blend price. The witness further added that producers are in fact not harmed when a partially regulated plant is supplied by a cooperative (as is the case with Superior Dairy), as the cooperative (and its producer-members) then receive the higher in-plant blend price. The witness also said that these blend price differences have not caused market disorder since other Mideast fully regulated distributing plants have continued to receive an adequate supply of milk.

The Superior Dairy witness explained how adoption of Proposal 1 would harm its own independent producer suppliers. The witness testified that Superior Dairy purchases raw milk from approximately 120 independent producers, most of which are small businesses. Those producers, noted Superior Dairy's witness, receive an in-plant blend price for their raw milk greater than the Mideast order blend price. The witness asserted that the price the independent producers receive for their raw milk would decrease should the Superior Canton facility be

fully regulated because the Superior Canton plant would be required to account to the PSF for its Class I sales and that additional revenue would then be shared with all producers servicing the market, not just Superior Dairy's independent producer suppliers.

The Superior Dairy witness testified that Proposal 1 should not be adopted and its Canton, Ohio, plant should remain partially regulated. However, the witness said, should the Department decide to fully regulate either the Canton or Wauseon plant, it would prefer that both plants be regulated on the Mideast order. The witness noted that provisions exist in certain orders allowing plants producing ESL products to be locked into regulation on an order by virtue of geographic location rather than route distribution. The witness stated that since the route disposition patterns of Superior Dairy are similar to plants producing ESL products, it is reasonable to regulate Superior Dairy based on geographical location, not route disposition.

Accordingly, the Superior Dairy witness offered two separate modifications to Proposal 1 that the witness believed would lock Superior Dairy's Canton plant into regulation on the Mideast order. The witness suggested that Proposal 1 be modified by removing the 25 percent in-area route disposition qualifier so that plants physically located in the Mideast order with route disposition and transfers of at least 50 percent into Federal marketing areas would be regulated on the Mideast order. Alternatively, the witness suggested modifying Proposal 1 so that plants located in the Mideast order that have route disposition and transfers of at least 50 percent into any Federal market orders and sales into at least four separate marketing areas would be regulated on the Mideast order.

The Superior Dairy witness disputed multiple times the data assembled and analyzed by the DFA *et al.* witness. The Superior Dairy witness explained that the data used by DFA *et al.* in its analysis did not, among other things, address over-order premiums paid by Superior Dairy to their producer suppliers.

The witness from Superior Dairy was of the opinion that there was no need for the Department to consider this measure under emergency rulemaking procedures.

A post-hearing brief was submitted on behalf of DFA *et al.* reiterating their testimony that inadequate Pool Plant provisions in the Mideast order are causing disorderly marketing conditions and that a large fluid milk bottling plant should not be able to avoid full regulation by transferring fluid milk products between plants. The brief claimed that when using the analysis introduced in their testimony, the cost advantage to a hypothetical PRDP of similar size to Superior Dairy (a monthly plant volume of 40 million pounds) averaged $373,000 per month from January 2010 to July 2011. The brief reiterated that because Superior Dairy can include over-order premiums in its theoretical pool obligation calculation, this can amount to a large cost advantage to the plant. The brief explained that by Superior Dairy avoiding payments into the PSF, producer price differentials, on average, were reduced by approximately $0.028 per cwt in the Mideast order or $0.018 per cwt in the Northeast order, depending on how the plant was regulated. The brief also reinforced the SMA witness' testimony regarding the disorder created in the pooling of reserve supplies by a plant changing regulatory status from one order to another. The brief also emphasized the importance of market-wide pooling and uniform producer and handler values and stated that these fundamentals are undermined if major participants in the market can avoid regulation.

In brief, DFA *et al.* wrote that they were in support of the first alternate proposal offered at the hearing by Superior Dairy. The brief stated that the alternate proposal would resolve the market disorder that was the catalyst for the hearing request and that DFA *et al.* considers this the best option for producers supplying the fluid milk needs of the Superior Dairy Canton facility and Mideast marketing area as a whole. The brief stated that while typically a plant is regulated according to its route distribution, there have been exceptions made in order to regulate plants based on their procurement area. In these instances, DFA *et al.* wrote, milk procurement area and producer price equity became the integral, more important factor because of the need to stabilize the milk supply for plants with route distribution in multiple marketing areas. As a whole, DFA *et al.* viewed the first alternate proposal as the best amendment to resolve the issue and, if the Department did not recommend Superior Dairy's alternative proposal, suggested that Proposal 1 as originally noticed be adopted.

A post-hearing brief was filed on behalf of Land O'Lakes, Inc., Agri-Mark, Inc., Maryland and Virginia Milk Producers Cooperative Association, Inc., and St. Alban's Cooperative Creamery, Inc., (Northeastern Cooperatives), in support of Proposal 1. The Northeastern Cooperatives are member-owned Capper Volstead cooperatives that pool their producer's milk on numerous FMMOs. The brief reiterated the testimony of witnesses in support of Proposal 1 as originally noticed and reviewed current order provisions that distinguish where a plant is regulated based off of the plant's route disposition instead of the geographical location of the plant. The brief reasserted the testimony of a Superior Dairy witness who said that 28 percent of its route distribution was in the Northeast marketing area in comparison to 20 percent in the Mideast marketing area.

The Northeastern Cooperatives brief opposed the alternate proposals offered by Superior Dairy at the hearing. The brief stated that alternate proposals should have been offered when the initial request for additional proposals was made so they could be included in the Notice of Hearing. The brief emphasized the Northeastern Cooperatives' opinion that the alternate proposals would lock-in Superior Dairy to regulation by the Mideast order, even if its route distribution was 25 percent or more into another Federal marketing area. The brief stressed that implementation of a supposed lock-in provision would be of economic benefit to Superior Dairy, not producers.

The Northeastern Cooperatives brief also stressed that the alternative Superior Dairy proposal would not require a plant to meet the 25 percent in-area route disposition standard, even though the plant would become regulated by the Mideast order. The brief emphasized that it is important to always consider route disposition as a factor when determining the FMMO in which a plant should be regulated.

SMA filed a post hearing brief reiterating that disorderly marketing conditions are occurring as a result of inadequate Pool Plant provisions. SMA, in brief, offered their support to the modifications of Proposal 1 advanced by Superior Dairy during the hearing as a method for alleviating the disorderly marketing conditions. The brief noted that the disorder results from the disruption of uniform pricing, the switching of the regulatory status of plants from one order to another, the improper pooling assignment of reserve supplies, and the uneconomic movements of milk. SMA, in testimony and in written brief, urged the Department to consider the matter under emergency procedures, asserting that confidence in the Federal milk marketing order pricing system could otherwise be compromised.

A post-hearing brief submitted on behalf of Superior Dairy reiterated many

of the points made at the hearing and recommended adoption of the first modification it had offered at the hearing. Superior Dairy asserted that their modified proposal would lock-in the Superior Dairy Canton plant as a Mideast pool plant by virtue of its geographic location notwithstanding its failure to meet the 25 percent in-area route distribution qualification. The brief stated that the purpose of the amendment was to regulate Superior Dairy as a pool plant under the terms of the Mideast order regardless of whether or not it also qualified as a pool plant in any other order. The brief summarized that the modified proposal sets as qualification standards (1) distribution and transfers of 50 percent or greater of a plant's fluid milk products into Federal milk marketing areas, and (2) plant location within the Mideast marketing area. Superior Dairy wrote that adoption of modified Proposal 1 would ensure the marketwide pooling of revenue for all producers and give Superior Dairy regulatory stability.

In brief, Superior Dairy acknowledged that shifts in plant regulation create disruption and challenges in producer pooling and milk supply coordination. The brief also acknowledged that partially regulated plants such as Superior Dairy enjoyed certain advantages over fully regulated plants as they had price advantages in the procurement of raw milk. The brief explained that because distributing plants have a high Class I utilization, producers supplying the PRDP will always receive a higher price than those serving fully regulated distributing plants, who in turn receive the order's minimum blend price. Consequently, the brief noted, producers serving the PRDP do not equitably share in the burden of balancing the market's milk supplies.

Superior Dairy's brief continued to refute the information provided by the DFA *et al.* witness regarding pricing assumptions and Superior Dairy's purported raw milk cost advantage. Superior Dairy stated that a price advantage did exist to them from being partially regulated; however, the calculation of that advantage as provided by DFA *et al.* was overstated.

Discussion and Findings

At issue in this proceeding is the consideration of proposed amendments to the Mideast FMMO Pool Plant provisions to more adequately define the plants that should be fully regulated by the terms of the Mideast order. This decision recommends that the Pool Plant provisions be amended to reflect that distributing plants located within the marketing area with a Class I utilization of at least 30 percent and with combined route disposition and transfers of at least 50 percent into Federal milk marketing areas would be regulated as a pool distributing plant under the terms of the Mideast marketing order (not withstanding other order provisions as discussed below).

The Pool Plant provisions of the Mideast order [2] define how plants demonstrate an adequate association with the fluid market, and subsequently how the milk associated with those plants is pooled and priced under the terms of the order. There are several types of plants defined in the Pool Plant provisions. This decision recommends a change to the definition of a Pool Distributing Plant (a plant that processes milk for fluid uses).

The Pool Distributing Plant standard [3] of the Mideast order first requires a plant to demonstrate an adequate association with the fluid market by meeting a minimum Class I utilization. This is determined by the percentage of fluid milk physically received at the plant that is distributed or transferred as Class I (fluid) products. The Class I utilization standard for the Mideast FMMO is 30 percent. The plant must also show a reasonable association with the order's Class I market; that association is determined by the percentage of the plant's total Class I route disposition that is distributed or transferred within the marketing area, or ''in-area'' route disposition. In the Mideast order, a plant is fully regulated if at least 25 percent of its Class I route disposition and transfers are within the Mideast marketing area. If a plant meets both the 30 percent Class I utilization standard and the 25 percent in-area route distribution standard (termed the ''30/25 percent standard''), the plant is fully regulated as a distributing plant under the terms of the Mideast order. Once fully regulated, a pool distributing plant must account to the marketwide pool at classified use values and is required to pay its producers at least the order's minimum blend price. This process ensures that similarly situated handlers have the same minimum raw milk costs and that the dairy farmers supplying the market share in the revenue generated from all fluid milk sales within the marketing area.

FMMOs rely on the tools of classified pricing and marketwide pooling to assure an adequate supply of milk to meet the market's fluid needs and to provide for the equitable sharing of the revenues arising from the classified pricing of milk. Classified pricing assigns a value to milk according to how the milk is used; Class I (fluid) generally being the highest, followed by Class II (soft products), Class III (cheese), and Class IV (butter and nonfat dry milk). Regulated handlers who buy milk from dairy farmers account to the order's marketwide pool at classified prices according to how they use the milk. Dairy farmers are then paid a weighted average or ''blend'' price. The blend price is derived through the marketwide pooling of all class uses of milk in a marketing area, thus each producer receives an equal share of each use class of milk and is indifferent as to what class their milk is used. Since it is primarily the higher-valued Class I use of milk that adds additional revenue to the marketwide pool, it is reasonable to expect that the producers who consistently bear the costs of supplying the market's fluid needs should be the ones to share in the returns arising from higher-valued Class I sales.

FMMOs have unique provisions for handlers that have route distribution into a marketing area but do not meet the standards for full regulation under the terms of the order. A handler that does not meet the minimum standard for full regulation under a specific FMMO (30/25 percent in the Mideast FMMO) but has route disposition within that marketing area and therefore competes with other fully regulated handlers for their Class I sales is known as a Partially Regulated Distributing Plant (PRDP). USDA has determined that some minimum regulation of PRDPs is necessary to maintain orderly marketing conditions and ensure that the order's classified pricing and marketwide pooling provisions are not undermined.

There are three regulatory schemes, which may require a PRDP to account for route disposition into a marketing area: (1) A PRDP may pay into an order's PSF the difference between the Class I price and the market's blend price on its route disposition within the marketing area; (2) The PRDP pool obligation is calculated as if the plant were fully regulated and this obligation is compared to what the PRDP actually paid its milk suppliers in aggregate. If the obligation is greater than what it actually paid, the PRDP must pay the difference to the order's PSF. If the pool obligation is less than what the PRDP actually paid to its milk suppliers, then no additional payment to the order's PSF is necessary. This is often referred to as the ''Wichita Option''; or (3) If a PRDP is subject to a State order with classified pricing and marketwide

[2] 7 CFR 1033.7.

[3] 7 CFR 1033.7(a).

pooling, then it must pay into the order's PSF the difference between what it was required to pay into the State order and the applicable Class I price at the PRDP's location. An administrative assessment is collected by the Market Administrator regardless of which payment scheme the PRDP falls under and whether or not a payment into the PSF is required.

The proponents of Proposal 1 requested this rulemaking proceeding based on their opinion that the current Pool Plant provisions of the Mideast FMMO have allowed a plant with significant route distribution throughout the Mideast and other Federal marketing areas to become a PRDP, which in turn has resulted in disorderly marketing conditions. The proponents described, in their hearing testimony and post-hearing brief, a situation where Superior Dairy, which had previously been fully regulated by either the Northeast or Mideast orders, was able to circumvent full regulation by either order.

The proponents provided great detail as to how a loophole in the Pool Plant provisions has allowed a large plant with significant fluid milk sales into Federally regulated areas to avoid full regulation on any Federal order and outlined the market disorder this has created: (1) Similarly situated handlers who compete for fluid milk sales within the marketing area are no longer assured that they pay the same minimum prices for raw milk; and (2) Producers who service the order's Class I market are no longer sharing in all the proceeds from the order's Class I sales. The proponents argued that if this loophole is not closed, other handlers with more than one distributing plant could set up similar distribution patterns between their plants to also avoid full regulation.

Along the same line, the SMA witness described a third disorderly marketing condition, the improper pooling of reserve milk supplies. This witness described a situation where reserve supplies associated with a plant can lose association with the order's marketwide pool as a result of a plant being able to change regulation between orders with different pooling standards.

The Superior Dairy witness testified at the hearing that newly-patented filling and packaging technologies used at their bottling facilities have given them a competitive advantage in the marketplace and as a result, the ability to expand their distribution into numerous Federal marketing areas. According to the Superior Dairy witness, after expanding their route disposition into the Northeast marketing area in April 2010, they became a fully regulated handler in the Northeast order. Superior claims that they quickly found regulation on the Northeast order to be financially difficult to sustain because the Northeast order blend price payable to producers at the Canton location was lower than the Mideast order blend price at the same location by an average of $0.13 per cwt. The Superior Dairy witness testified that in early 2011 it purchased a small distributing plant in Wauseon, Ohio which allowed it to adjust its distribution patterns between the two plants so that the Canton plant was no longer regulated by any Federal order.

At the hearing, Superior Dairy offered two alternate modifications to Proposal 1. In their post-hearing brief, Superior Dairy supported adoption of their first modification which would fully regulate any distributing plant physically located within the geographic boundary of the Mideast marketing area if its total fluid route disposition into all Federal orders was greater than 50 percent. This modification would eliminate the stipulation, contained in Proposal 1 as originally noticed, that a plant's sales within any individual marketing area had to be less than 25 percent of its total route distribution.

The pooling standards of a FMMO are represented in the Pool Plant, Producer, and the Producer Milk provisions. Performance based pooling standards provide the only viable method to identify the milk of those producers who service the Class I needs of the market and therefore determine those eligible to share in the marketwide pool. If a pooling provision does not reasonably accomplish this end, the proceeds that accrue to the PSF from the market's fluid milk sales are not equitably shared with the appropriate producers. The result is the unwarranted lowering of returns to those producers who actually incur the costs of servicing and supplying the needs of the fluid milk market and the reserve supplies that are necessary to ensure that fluid demands are met.

The hearing record reflects, and this decision finds, that the current Mideast Pool Plant provisions (7 CFR 1033.7) do not adequately define the plants and the producer milk associated with those plants, which serve the needs of the fluid milk market and should therefore share in the additional revenue arising from fluid milk sales. The hearing record reflects that disorderly marketing conditions arise when a handler that has significant route distribution into Federally regulated areas is able to avoid regulation by altering its distribution patterns. FMMOs, through the fundamental tools of classified pricing and marketwide pooling, serve to minimize disorderly marketing conditions like the ones presented in this proceeding. A plant's ability to avoid regulation by altering its distribution pattern undermines the classified pricing and marketwide pooling fundamentals that are essential in maintaining orderly marketing.

FMMOs require that distributing plants meeting the Class I utilization and in-area route distribution standards be fully regulated under the terms of the appropriate order. Along the same line, plants with minimal sales into a regulated area and therefore minimal impact on the market fall under partial, not full, regulation. The record reflects that prior to March 2011 Superior Dairy was fully regulated by either the Mideast or Northeast order. Superior Dairy revealed at the hearing that it was the purchase of the Wauseon, Ohio, distributing plant and the subsequent change in distribution patterns between the two plants that enabled the Canton, Ohio, plant to become a PRDP, not because its overall milk sales decreased to a volume where it no longer had an association with the fluid market. In fact, the record shows that Superior Dairy's Class I utilization has remained around 80 percent regardless of its regulatory status and 90 percent of its sales are into regulated Federal milk marketing areas.

The Ohio region where Superior Dairy's plants are located is in relative proximity to five other Federal milk marketing area boundaries. This unique location lends opportunity to adjust route disposition to avoid meeting the in-area route standard of any one Federal order.

The record reflects that Superior Dairy utilizes the ''Wichita Option'' to account for its Class I sales into regulated areas. This choice allows the Canton plant to operate as an individual handler pool. Superior Dairy's operation as an individual handler pool, after having been regulated continuously for decades as a fully regulated distributing plant with a significant volume and an overwhelming majority of its Class I sales into Federally regulated areas, undermines the order's classified pricing and marketwide pooling system—essential principles for orderly marketing and competitive equity. Additionally, handler equity, which the FMMO system strives to maintain, can be evaluated on two fronts: where handlers compete in route distribution and where handlers compete in milk procurement. Both factors are important. However, when the balance of competition is disrupted through uneconomic movements of milk, one factor may become more important in

order to restore competitive equity amongst competing handlers.

The classified pricing system ensures regulated handlers that their competitors are paying uniform minimum raw milk costs. In this way, no competitor has an advantage or disadvantage in its raw milk costs because of its regulatory status. While a fully regulated handler must account to the pool for its classified use value and pay its producers the market's blend price, a PRDP using the ''Wichita Option''—as in the case of Superior Dairy—must only show that it paid its producer suppliers, in aggregate, the classified use values of its raw milk supply. A PRDP operating essentially as an individual handler pool that has a higher in-plant Class I utilization than the market has a competitive advantage when it comes to raw milk procurement over a regulated competitor since it is able to pay its suppliers a higher in-plant blend price. At the hearing, a Superior Dairy witness testified that their Class I utilization was approximately 82 percent. The Class I utilization for the Mideast order in October 2011 (the month the hearing was held) was 38.1 percent. Superior Dairy's raw milk cost advantage due to its partially regulated status is equal to the difference between the in-plant blend price and the market's blend price. This is revenue that a fully regulated handler would have been required to pay into the order's PSF to be shared with all the market's producers, but which Superior has available to pay directly to its producers because of its partially regulated status.

Additionally, because Superior Dairy can include over-order premiums as part of the calculation relied on to prove to the Market Administrator under the ''Wichita Option'' that minimum classified prices are being paid, similarly situated handlers are not guaranteed the same raw milk costs. The record reflects that the payment of over-order premiums is prevalent in the Mideast marketing area. While a regulated handler must pay the order's minimum blend price plus any over-order premium they have negotiated with its suppliers, a PRDP is able to use the over-order premium to offset its regulatory PSF payment obligation to its suppliers. For example, assume a prevailing over-order premium of $2.00 per cwt on all Class I milk is charged by cooperatives servicing distributing plants and the order's Class I price for the month is $19.00 per cwt. A fully regulated handler would account to the PSF at $19.00 per cwt for any Class I milk utilized, and pay the additional over-order premium of $2.00 per cwt directly to the cooperative—meaning that they are actually paying $21.00 per cwt for Class I milk. A PRDP can include the $2.00 per cwt over-order premium paid directly to its suppliers when calculating whether it has an additional pool obligation under the ''Wichita Option.'' In effect, the PRDP pays $19.00 per cwt while the fully regulated plant must pay $21.00 per cwt. This theoretical $2.00 per cwt advantage can be used by the plant in any way it deems fit: to procure additional milk suppliers, to pass the money on to its suppliers, to create a sales advantage over its competitors, or to simply keep as company profit.

This decision also finds that marketwide pooling principles are undermined because of Superior Dairy's PRDP status. It is clear that Superior is able to retain monies that it otherwise would pay into the PSF if it were fully regulated. The hearing record reflects attempts by proponents to estimate Superior Dairy's cost advantage, and taken a step further, monies that would otherwise be paid into the marketwide pool. In its post-hearing brief, Superior Dairy refutes some of the proponents' assumptions and argues that its cost advantage is lower. Estimating the exact amount of Superior Dairy's purported cost advantage gained by avoiding full regulation is difficult without disclosing confidential business information; furthermore, determining the exact level of that advantage is not necessary to demonstrate its existence and consequent market disorder. What is important is that money is not being equitably shared with all producers supplying the Class I market. Even if Superior Dairy was sharing that money with all its producer-suppliers, it is money that should be shared with all producers servicing the market. Consequently, producers serving the market are receiving a lower blend price than they otherwise would if Superior Dairy were fully regulated.

This decision recommends the adoption of Proposal 1 as modified by Superior Dairy as an appropriate solution to the current market disorder. While FMMOs typically regulate (pool) plants based on where their fluid milk sales occur, the hearing record reflects that it is not unprecedented for a plant to be regulated based on competing milk procurement areas. A 1988 decision (53 FR 14804), for example, regulated a plant into the then Louisville-Lexington-Evansville FMMO, despite the plant having greater route disposition into another FMMO. This finding was based on the fact that despite having greater sales into another FMMO, the raw milk procurement area of the plant was the same as other handlers who were regulated by the Louisville-Lexington-Evansville FMMO.

Additionally, all Federal orders contain provisions to regulate plants that primarily process ultra-high temperature or ESL milk products in the Federal order where the plant is physically located. Plants producing longer shelf-life products are regulated by the order where they are physically located [4] primarily because the wide and ever changing geographic distribution patterns of their products can lead to regulation under multiple orders over time. This is not unlike Superior Dairy, who distributes product into seven marketing areas.

The record reflects that Superior Dairy's Canton, Ohio plant is located in the middle of the Mideast marketing area and competes for a raw milk supply with other pool distributing plants that are regulated by the Mideast order. Furthermore, the record reflects that while Superior Dairy has been able to stay below the 25 percent in-area route distribution standard in other marketing areas, its route distribution into some Federal marketing areas exceeds 20 percent. Given that the plant has route distribution into 7 marketing areas, a 25 percent route distribution threshold could cause future market disorder if the plant shifts regulation from one order to another. Therefore, this decision finds it appropriate under the facts presented at this hearing to more heavily rely on milk procurement area, not route disposition, as the fundamental determinant in recommending changes to the Pool Plant provisions of the Mideast FMMO. Consequently, this decision recommends that distributing plants physically located in the Mideast marketing area who do not meet the 25 percent in-area route distribution standard (the current pooling standard for distributing plants to be regulated by the Mideast order), but do have a majority (50 percent or more) of their fluid milk sales into Federally regulated areas, be regulated by the Mideast order.

In their post-hearing brief, Superior Dairy reiterated its opinion that a modified Proposal 1 would ''lock-in'' the Superior Canton plant into regulation under the Mideast order, regardless of future route distribution patterns. However, FMMO's contain a provision in each order (§ 1033.7(h)(3) in the Mideast order) which specifies that if a pool plant has route disposition greater than 50 percent into another Federal order for at least 3 consecutive months then that plant will become

[4] 7 CFR 10____.7(b).

regulated by that Federal order. This decision does not amend that provision. If at any time a pool plant regulated by the Mideast order has route disposition of greater than 50 percent into another Federal order for 3 or more consecutive months, that plant would then become regulated by the order where it has a majority of its sales.

Superior Dairy argued in their post-hearing brief that a different provision contained in each order, (§ 1033.7(h)(5) in the Mideast order) could be relied upon to ''lock-in'' Superior Dairy to the Mideast order. This provision allows the Mideast order to regulate a pool plant even if it meets the pooling standards of another order—essentially it allows the Mideast regulations to trump another order's regulations if the plant is ''required'' to be pooled by the Mideast order. Although this decision recommends changes to the Pool Plant provisions of the Mideast order based on clear evidence of disorderly marketing conditions resulting from the partial regulation of Superior Dairy and relies heavily on milk procurement area as one of the reasons behind this change, this decision does not ''lock-in'' or require Superior Dairy, or any other handler, to be regulated by the Mideast FMMO. This decision simply modifies the Pool Plant provisions so that any plant located in the Mideast marketing area that does not meet the in-area route distribution standard, but has at least 50 percent of its total route distribution into Federal marketing areas, becomes regulated under the Mideast order. To be clear, a situation could arise where a plant physically located in the Mideast marketing area meets the in-area route distribution standard of another order but is still regulated on the Mideast order. However, as current regulations already provide for, any plant located in the Mideast marketing area that has more than 50 percent of its route distribution into another Federal order for 3 consecutive months would still become regulated by that other Federal order.

Lastly, in their post-hearing brief the Northeast Cooperatives took exception to the two modified proposal options offered by Superior Dairy. The Northeast Cooperatives were of the opinion that the two modified proposals presented at the hearing were not properly noticed and that interested parties did not have the opportunity to offer evidence regarding the modifications. This decision finds that the modifications offered by Superior Dairy at the hearing were in fact reasonable given the scope of the initial hearing request and that all interested parties in all Federal orders were given notice and had ample opportunity to offer evidence at the hearing and comment in a post-hearing brief.

Proponents and supporters of the originally noticed Proposal 1 requested that the Department consider this proceeding on an emergency basis because of the ongoing market disorder. The Department finds that issuing a decision on an emergency basis is not warranted. This decision recommends adoption of Proposal 1 as was modified at the hearing. It is appropriate to give all interested parties the opportunity to consider the Department's findings and file written comments and exceptions to this decision before requesting producers to vote on the order, as amended. Additionally, this rulemaking will adhere to the Supplemental Rules of Practice that were issued as a result of the Food, Conservation and Energy Act of 2008 (as contained in 7 CFR part 900.20–.33). These newly established rules provide specific timeframes that the Department must adhere to when amending Federal milk marketing agreements and orders. Therefore, there is insufficient justification for issuing this decision on an emergency basis as the market disorder can still be addressed in a timely manner while allowing for maximum public input before any regulatory changes are made.

AMS has made a conforming change to the regulatory text as offered by Superior Dairy and as recommended for adoption in this decision. The reference to the 30 percent Class I utilization standard that is already contained in the Pool Distributing plant definition has been added to the proposed amendment. This addition clarifies that a pool plant physically located in the Mideast marketing area that meets the 50 percent route disposition into Federally regulated marketing areas must still meet the 30 percent Class I utilization standard in order to be regulated on the Mideast order.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings, and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Mideast order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for the milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreement upon which a hearing has been held.

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreements and the orders as hereby proposed to be amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Mideast marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1033

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR part 1033, is proposed to be amended as follows:

1. The authority citation for 7 CFR part 1033 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

PART 1033—MILK IN THE MIDEAST MARKETING AREA

2. Amend § 1033.7 by revising paragraph (a) to read as follows:

§ 1033.7 Pool Plant.

* * * * *

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or § ____.7(b) of any other Federal milk order, from which during the month 30 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area. Plants located within the marketing area that meet the 30 percent route disposition standard contained above, and have combined route disposition and transfers of at least 50 percent into Federal order marketing areas will be regulated as a distributing plant in this order.

* * * * *

Dated: February 24, 2012.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2012–4827 Filed 2–28–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 579

[Docket No. FDA–2012–F–0178]

Sadex Corp.; Filing of Food Additive Petition (Animal Use); Electron Beam and X-Ray Sources for Irradiation of Poultry Feed and Poultry Feed Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of petition.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sadex Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of electron beam and x-ray sources for irradiation of poultry feed and poultry feed ingredients.

DATES: Submit either electronic or written comments on the petitioner's environmental assessment by March 30, 2012.

ADDRESSES: Submit electronic comments to: *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Isabel W. Pocurull, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6853, email: *isabel.pocurull@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5)), notice is given that a food additive petition (FAP 2272) has been filed by Sadex Corp., 2650 Murray St., Sioux City, IA 51111. The petition proposes to amend Title 21 of the Code of Federal Regulations (CFR) in part 579 *Irradiation in the Production, Processing, and Handling of Animal Feed and Pet Food* (21 CFR part 579) to provide for the safe use of electron beam and x-ray sources for irradiation of poultry feed and poultry feed ingredients.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the Agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Division of Dockets Management (see **DATES** and **ADDRESSES**) for public review and comment.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the Agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the Agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.51(b).

Dated: February 24, 2012.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2012–4810 Filed 2–28–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–133223–08]

RIN 1545–BI19

Indian Tribal Government Plans; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on an advance notice of proposed rulemaking; correction.

SUMMARY: This document corrects a notice of public hearing on an advance proposed rulemaking (REG–133233–08) that was published in the **Federal Register** on Friday, February 3, 2012 (77 FR 5442) relating to Indian tribal government plans.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Pamela Kinard at (202) 622–6060, and regarding the submission of public comments and the public hearing, Ms Oluwafunmilayo (Funmi) Taylor, at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The notice of public hearing on an advance notice proposed rulemaking (REG–133233–08) that is the subject of this correction is under section 414(d) of the Internal Revenue Code.

Need for Correction

As published, REG–133223–08, contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of public hearing on an advance proposed rulemaking (REG–133233–08) which was the subject of FR Doc. 2012–2502, is corrected as follows:

1. On page 5442, column 3, in the preamble, under the caption **DATES:**, line four, the language ''Building. The IRS must receive outlines'' is corrected to read ''Building. Written or electronic comments must be received by June 18, 2012. The IRS must receive outlines''

2. On page 5443, column 1, in the preamble, under the caption **ADDRESSES:**, second paragraph, first line, the language ''Mail outlines to CC:PA:LPD:PR (REG-'' is corrected to read ''Mail submissions and outlines to CC:PA:LPD:PR (REG-''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.

[FR Doc. 2012–4850 Filed 2–28–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 20

[REG–112196–07]

RIN 1545–BH64

Gross Estate; Election to Value on Alternate Valuation Date; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations (REG–112196–07), providing guidance respecting the election to use the alternate valuation method under section 2032 of the Internal Revenue Code.

DATES: The public hearing originally scheduled for March 9, 2012 at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: LaNita Van Dyke of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration), at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Friday, November 18, 2011 (76 FR 71491), announced that a public hearing was scheduled for March 9, 2012, at 10 a.m., in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is under section 2032 of the Internal Revenue Code.

The public comment period for these regulations expired on February 16, 2012. The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Monday, February 27, 2012, no one has requested to speak. Therefore, the public hearing scheduled for March 9, 2012, is cancelled.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedures and Administration.

[FR Doc. 2012–4861 Filed 2–28–12; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–9641–3]

Long Term 2 Enhanced Surface Water Treatment Rule: Uncovered Finished Water Reservoirs; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA) is hosting a public meeting on April 24, 2012, concerning information that may inform the regulatory review of the uncovered finished water reservoir requirement in the Long Term 2 Enhanced Surface Water Treatment Rule (LT2 rule). At this meeting, EPA will provide background information on the LT2 rule's uncovered finished water reservoir requirement and the agency's Six Year Review process. EPA also plans to discuss and solicit public input on data and information related to microbial occurrence of *Cryptosporidium, Giardia,* viruses, and other pathogens/indicators in uncovered finished water reservoirs; public health risks; strategies to control or remove contaminants in uncovered finished water reservoirs; and potential assessment approaches to determine the effectiveness of these control and/or removal strategies. The primary focus of this meeting is to have a scientific and technical discussion related to uncovered finished water reservoirs. EPA will consider the data and/or information discussed at this meeting during the agency's review of the LT2 rule, which the agency announced as part of EPA's Retrospective Review Plan under Executive Order (E.O.) 13563 in August 2011.

DATES: The public meeting will be held on Tuesday, April 24, 2012 (8 a.m. to 5 p.m., Eastern Time).

ADDRESSES: The public meeting will be held at the EPA East Building, Room 1153, 1201 Constitution Avenue NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact, César Cordero, Standards and Risk Management Division, Office of Ground Water and Drinking Water (MC 4607M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460 at (202) 564–3716 or *cordero.cesar@epa.gov.* For more information about the LT2 rule or the Six Year Review Process, visit: *http://water.epa.gov/lawsregs/rulesregs/sdwa/lt2/* or *http://water.epa.gov/lawsregs/rulesregs/regulatingcontaminants/sixyearreview/index.cfm.*

SUPPLEMENTARY INFORMATION: The purpose of the LT2 rule, promulgated in 2006, is to reduce disease incidence associated with *Cryptosporidium* and other disease-causing microorganisms in drinking water. The rule includes requirements for public water systems to either cover an uncovered finished water storage facility or treat the storage facility discharge to address the risk of contamination. The 1996 Amendments to the Safe Drinking Water Act (SDWA) require EPA to review its existing drinking water regulations every six years. SDWA (Section 1412(b)(9)) specifies that any revision to a national primary drinking water regulation ''shall maintain, or provide for greater, protection of the health of persons.'' In response to E.O. 13563, EPA announced in the August 2011 document, *Improving Our Regulations: Final Plan for Periodic Review Retrospective Reviews of Existing Regulations,* that the agency would review the LT2 rule. As part of the review, EPA plans to analyze information and data to evaluate the approaches for managing risks related to uncovered finished water reservoirs while ''maintaining, or providing for greater, protection of the health of persons'' as specified in SDWA.

The public meeting announced in this notice will be the second meeting related to the LT2 rule hosted by the agency in response to E.O. 13563. The first meeting occurred on December 7, 2011, and focused on analytical methods for *Cryptosporidium* and the source water monitoring data from the LT2 rule.

This meeting is open to the public. EPA encourages public input and will allocate time on the agenda to receive verbal statements. EPA requests that participants limit statements to the topics described in the **SUMMARY** section of this notice and will hold participants to a set timeframe for their statements. EPA also requests that only one person present a statement on behalf of a group or organization. Individuals or organizations interested in presenting a

statement should notify César Cordero by email at *cordero.cesar@epa.gov* no later than April 20, 2012. Individuals that have scientific data that they would like EPA to consider during regulatory review of the uncovered finished water reservoir requirement are encouraged to email their data to César Cordero. It would be helpful to have the data in advance of the public meeting.

Registration: Individuals planning to participate in the public meeting must register for the meeting by email at *LT2Aprilmeeting@epa.gov* no later than April 20, 2012. Teleconferencing will be available for individuals unable to attend the meeting in person. EPA will do its best to include all those interested, but may have to limit attendance due to room and/or teleconference size limitations and therefore urges people to register early. When registering, please include your full name, organization, phone number, and email address in the body of the email message and indicate whether you would be participating in person or via teleconference. Teleconference information will be emailed to registered participants in advance of the meeting.

Special Accommodations: For information on access or accommodations for individuals with disabilities, please contact Jini Mohanty at (202) 564–5269 or by email at *mohanty.jini@epa.gov*. Please allow at least five business days prior to the meeting to give EPA time to process your request.

Dated: February 24, 2012.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2012–4825 Filed 2–28–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R10–RCRA–2011–0973; FRL–9633–8]

Idaho: Proposed Authorization of State Hazardous Waste Management Program; Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Idaho has applied to EPA for final authorization of certain changes to its hazardous waste program under the Resource Conservation and Recovery Act, as amended (RCRA). RCRA allows EPA to authorize State hazardous waste management programs if EPA finds that such programs are equivalent to and consistent with the Federal program and provide adequate enforcement of compliance. EPA has reviewed Idaho's application, has preliminarily determined these changes satisfy all requirements needed to qualify for final authorization, and is proposing to authorize the State's changes.

DATES: Comments on this proposed rule must be received on or before March 30, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–RCRA–2011–0973 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: kocourek.nina@epa.gov.*
- *Mail:* Nina Kocourek, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Mail Stop AWT–122, Seattle, Washington 98101.
- *Hand Delivery:* Nina Kocourek, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Mail Stop AWT–122, Seattle, Washington 98101. Such deliveries are only accepted during the normal business hours of operation; special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–RCRA–2011–0973. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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 Region 10 Library, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101. The EPA Region 10 Library is open from 9 a.m. to noon, and 1 to 4 p.m. Monday through Friday, excluding legal holidays. The EPA Region 10 Library telephone number is (206) 553–1289.

FOR FURTHER INFORMATION CONTACT: Nina Kocourek, U.S. EPA, Region 10, 1200 Sixth Avenue, Suite 900, Mail Stop AWT–122, Seattle, Washington 98101, email: *kocourek.nina@epa.gov,* phone number (206) 553–6502.

SUPPLEMENTARY INFORMATION:

I. Proposed Authorization Revision

A. Why are revisions to State programs necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize their changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations codified in Title 40 of the Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

B. What decisions have we made in this proposed rule concerning authorization?

EPA has preliminarily determined that Idaho's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we are proposing to grant Idaho final authorization to operate its hazardous

waste management program with the changes described in the authorization application. Idaho will have responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA, and which are not less stringent than existing requirements, take effect in authorized States before the States are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Idaho, including issuing permits, until the State is granted authorization to do so.

C. What will be the effect if Idaho is authorized for these changes?

If Idaho is authorized for these changes, a facility in Idaho subject to RCRA will have to comply with the authorized State requirements in lieu of the corresponding Federal requirements in order to comply with RCRA. Additionally, such persons will have to comply with any applicable Federal requirements, such as, for example, HSWA regulations issued by EPA for which the State has not received authorization, and RCRA requirements that are not supplanted by authorized State-issued requirements. Idaho continues to have enforcement responsibilities under its State hazardous waste management program for violations of this program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, 42 U.S.C. 6927, 6928, 6934 and 6973, and any other applicable statutory and regulatory provisions, which includes, among others, the authority to:

- Conduct inspections; require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements; suspend, terminate, modify or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

The action to approve these revisions will not impose additional requirements on the regulated community because the regulations for which Idaho will be authorized are already effective under State law and are not changed by the act of authorization.

D. What happens if EPA receives comments on this action?

If EPA receives comments on this action, we will address those comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. What has Idaho previously been authorized for?

Idaho initially received final authorization for its hazardous waste management program effective April 9, 1990 (55 FR 11015, March 29, 1990). Subsequently, EPA authorized revisions to the State's program effective June 5, 1992 (57 FR 11580, April 6, 1992), August 10, 1992, 1992 (57 FR 24757, June 11, 1992), June 11, 1995 (60 FR 18549, April 12, 1995), January 19, 1999 (63 FR 56086, October 21, 1998), July 1, 2002 (67 FR 44069, July 1, 2002), March 10, 2004 (69 FR 11322, March 10, 2004), July 22, 2005 (70 FR 42273, July 22, 2005), February 26, 2007 (72 FR 8283, February 26, 2007), and December 23, 2008 (73 FR 78647, December 23, 2008).

F. What changes are we proposing?

On October 25, 2011, Idaho submitted a program revision application requesting authorization for all delegable Federal hazardous waste regulations codified as of July 1, 2010. Idaho incorporated the delegable Federal regulations by reference in the following provisions of the Idaho Administrative Procedures Act (IDAPA): 58.01.05.001 through 58.01.05.010; 58.01.05.011 with the exception of the 4th sentence; 58.01.05.012; 58.01.05.013; 58.01.05.015 through 58.01.05.018; 58.01.05.356.01; and 58.01.05.998. This authorization revision request includes the following Federal rules for which Idaho is being authorized for the first time: Exclusion of Oil-Bearing Secondary Materials Processed in a Gasification System to Produce Synthesis Gas (73 FR 57, January 2, 2008); NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) Amendments (73 FR 18970, April 8, 2008); F019 Exemption for Wastewater Treatment Sludges from Auto Manufacturing Zinc Phosphating Processes (73 FR 31756, June 4, 2008); Revisions to the Definition of Solid Waste (73 FR 64668, October 30, 2008); Academic Laboratories Generator Standards, Alternative Standards for Hazardous Waste Determination and Accumulation (73 FR 72912, December 1, 2008); Expansion of RCRA Comparable Fuel Exclusion (73 FR 77954, December 19, 2008); OECD Requirements; Export Shipments of Spend Lead-Acid Batteries (75 FR 1236, January 8, 2010); Hazardous Waste Technical Corrections and Clarifications (75 FR 12989, March 18, 2010); and Withdrawal of the Emission Comparable Fuel Exclusion (75 FR 33712, June 15, 2010). EPA proposes to revise the state's authorized hazardous waste program in its entirety through July 1, 2010. Notice and an opportunity for the public to comment on this proposed authorization revision action are being provided at this time.

G. Where are the revised state rules different from the Federal rules?

Under RCRA 3009, EPA may not authorize State rules that are less stringent than the Federal program. Any State rules that are less stringent do not supplant the Federal regulations. State rules that are broader in scope than the Federal program requirements are not authorized. State rules that are equivalent to, and State rules that are more stringent than, the Federal program may be authorized, in which case they are enforceable by EPA. This section discusses certain rules where EPA has made the finding that the State program is more stringent and will be authorized and discusses certain portions of the Federal program that are not delegable to the State because of the Federal government's special role in foreign policy matters.

EPA does not authorize States to administer Federal import and export functions in any section of the RCRA hazardous waste regulations. Even though States do not receive authorization to administer the Federal government's import and export functions, found in 40 CFR part 262, subparts E, F and H, State programs are still required to adopt the Federal import and export provisions to maintain their equivalency with the Federal program. The State amended its import and export rules to include the Federal rule on Organization for Economic Cooperation and Development (OECD) Requirements; Export Shipments of Spend Lead-Acid Batteries (75 FR 1236, January 8, 2010). The State's rule is found at IDAPA 58.01.05.006. EPA will continue to implement those requirements directly through the RCRA regulations.

EPA has found that the State's Emergency Notification Requirements, (IDAPA 58.01.05.006.02), are more stringent than the Federal program. This is because the State's regulations require that the State Communications Center be contacted along with the Federal Center. EPA has found that the State's statutory requirement requiring

hazardous waste generators and commercial hazardous waste disposal facilities to file annual hazardous waste generation reports, Idaho Code Section 39–4411(4) and 39–4411(5), to be more stringent than the Federal program. EPA will authorize and enforce these more stringent provisions.

H. Who handles permits after the authorization takes effect?

Idaho will continue to issue permits for all the provisions for which it is authorized and administer the permits it issues. If EPA issued permits prior to authorizing Idaho for these revisions, these permits would continue in force until the effective date of the State's issuance or denial of a State hazardous waste permit, at which time EPA would modify the existing EPA permit to expire at an earlier date, terminate the existing EPA permit for cause, or allow the existing EPA permit to otherwise expire by its terms, except for those facilities located in Indian Country. EPA will not issue new permits or new portions of permits for provisions for which Idaho is authorized after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Idaho is not yet authorized.

I. What is codification and is EPA codifying Idaho's hazardous waste program as authorized in this proposed rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste management program into the Code of Federal Regulations (CFR). This is done by referencing the authorized State rules in 40 CFR part 272. EPA is reserving the amendment of 40 CFR part 272, subpart N for this authorization of Idaho's program revision until a later date.

J. How would authorizing Idaho for these revisions affect Indian country (18 U.S.C. 1151) in Idaho?

Idaho is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. Indian country includes:

1. All lands within the exterior boundaries of Indian reservations within or abutting the State of Idaho;
2. Any land held in trust by the U.S. for an Indian tribe; and
3. Any other land, whether on or off an Indian reservation, that qualifies as Indian country.

Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program on these lands.

II. Statutory and Executive Order Reviews

This proposed rule seeks to revise the State of Idaho's authorized hazardous waste program pursuant to section 3006 of RCRA and imposes no requirements other than those currently imposed by State law. This proposed rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 12866 and 13563

This action will authorize revisions to the federally approved hazardous waste program in Idaho. This type of action is exempt from review under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), and Executive Order 13563 (76 FR 3821, January 21, 2011).

2. Paperwork Reduction Act

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

3. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601 et seq., generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business, as codified in the Small Business Size Regulations at 13 CFR part 121; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has determined that this proposed action will not have a significant impact on small entities because the proposed rule will only have the effect of authorizing pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law. After considering the economic impacts of this action, I certify that this action will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates Reform Act

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

5. 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 rule proposes to authorize pre-existing State rules in the CFR. Thus, Executive Order 13132 does not apply to this action. Although section 6 of Executive Order 13132 does not apply to this action, EPA did consult with officials of the State of Idaho Department of Environmental Quality in developing this action. In the spirit of EO 13132 and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed action from state and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175, because it proposes to authorize pre-existing State rules. Thus, EPA has determined that Executive Order 13175 does not apply to this rule. EPA specifically solicits comment on this proposed action from tribal officials.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory

actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it proposes to authorize pre-existing State rules.

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

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

9. National Technology Transfer and Advancement Act

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

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

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

EPA has determined that this proposed action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action proposes to authorize pre-existing State rules which are equivalent to, and no less stringent than, existing Federal requirements.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This proposed action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: February 13, 2012.

Dennis J. McLerran,

Regional Administrator, EPA Region 10.

[FR Doc. 2012–3916 Filed 2–28–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385, 390, and 395

[Docket No. FMCSA–2010–0167]

RIN 2126–AB20

Electronic On-Board Recorders and Hours of Service Supporting Documents

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of public listening session.

SUMMARY: FMCSA announces that it will hold a public listening session to solicit information, concepts, ideas, and comments on Electronic On-Board Recorders (EOBRs) and the issue of driver harassment. Specifically, the Agency wants to know what factors, issues, and data it should consider as it addresses the distinction between productivity and harassment: what will prevent harassment from occurring; what types of harassment already exist; how frequently and to what extent harassment happens; and how an electronic device such as an EOBR, capable of contemporaneous transmission of information to a motor carrier will guard against (or fail to guard against) harassment. This session will be held in Louisville, Kentucky (KY), and will allow interested persons to present comments, views, and relevant new research that FMCSA should consider in development of the final rule. This listening session will be recorded and a transcript of the session will be placed in the docket for FMCSA's consideration. The listening session will also be webcast via the Internet.

DATES: The listening session will be held on Friday, March 23, 2012, at the Mid-America Trucking Show in Louisville, KY. The listening session will run from 10 a.m.–12 p.m., with a break between 12 p.m. and 2 p.m., and continue from 2 p.m.–4 p.m. local time, or earlier, if all participants wishing to express their views have done so.

ADDRESSES: The listening session will be held at the Kentucky Exposition Center (KEC), 937 Phillips Lane, Louisville, KY 40209, South Wing, Meeting Room C–101.

Internet Address for Live Webcast. FMCSA will post specific information on how to participate via the Internet on the FMCSA web site at: *http://www.fmcsa.dot.gov* in advance of the listening session.

You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2010–0167 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov*. Follow the on-line 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., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal document management system is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement

page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: For information concerning the listening session or the live webcast, please contact Ms. Shannon L. Watson, Senior Advisor for Policy, FMCSA, (202) 385–2395, *Shannon.Watson@dot.gov.*

Should you need sign language interpretation or other assistance to participate in this listening session, also contact Ms. Shannon L. Watson, at the above phone number, by Thursday, March 8, 2012, to allow us to arrange for such services. There is no guarantee that services requested on short notice can be provided.

SUPPLEMENTARY INFORMATION:

I. Background

On February 13, 2012, FMCSA published a notice of intent in the **Federal Register** announcing the Agency's plan for the Electronic On-Board Recorders and Hours of Service Supporting Documents rulemaking (EOBR 2) by working towards preparing a Supplemental Notice of Proposed Rulemaking (SNPRM) (77 FR 7562). In this notice, FMCSA stated it would do the following: (1) Hold listening sessions on the issue of driver harassment; (2) task the Motor Carrier Safety Advisory Committee (MCSAC) to assist in developing material to support this rulemaking, including technical specifications for EOBRs and their potential to be used to harass drivers; and (3) conduct research by surveying drivers, carriers, and vendors regarding harassment issues.

The following discussion summarizes the recent regulatory history of the agency's EOBR program:

EOBR 1

On April 5, 2010, the Agency issued a final rule (EOBR 1) (75 FR 17208) that provided new technical requirements for EOBRs. The EOBR 1 final rule also required the limited, remedial use of EOBRs for motor carriers with significant hours-of-service (HOS) violations. The EOBR 1 final rule required a motor carrier found to have a 10 percent violation rate for any HOS regulation listed in Appendix C of 49 CFR part 385 during a single compliance review to install and use EOBRs on all of its CMVs for a period of 2 years. The compliance date for the rule was June 4, 2012.

The Owner-Operator Independent Drivers Association (OOIDA) challenged the final rule in the United States Court of Appeals for the Seventh Circuit. OOIDA raised several concerns relating to EOBRs and their potential use for driver harassment. On August 26, 2011, the Court vacated the entire final rule. *Owner-Operator Indep. Drivers Ass'n et al.* v. *Fed. Motor Carrier Safety Admin.,* 656 F.3d. 580 (7th Cir. 2011). The Court held that, contrary to statutory requirements, the Agency failed to address the issue of driver harassment, including how EOBRs could potentially be used to harass drivers and ways to ensure that EOBRs were not used to harass drivers. The basis for the decision was FMCSA's failure to directly address a requirement in 49 U.S.C. 31137(a) which reads as follows:

> USE OF MONITORING DEVICES. If the Secretary of Transportation prescribes a regulation about the use of monitoring devices on commercial motor vehicles to increase compliance by operators of the vehicles with hours of service regulations of the Secretary, the regulation shall ensure that the devices are not used to harass vehicle operators. However, the devices may be used to monitor productivity of the operators.

The court's expectation about how the Agency should address harassment and productivity under the statutory directive included the following:

> In addition, an adequate explanation that addresses the distinction between productivity and harassment must also describe what precisely it is that will prevent harassment from occurring. The Agency needs to consider what types of harassment already exist, how frequently and to what extent harassment happens, and how an electronic device capable of contemporaneous transmission of information to a motor carrier will guard against (or fail to guard against) harassment. A study of these problems with EOBRs already in use, and a comparison with carriers that do not use these devices, might be one obvious way to measure any effect that requiring EOBRs might have on driver harassment (Id. at 588–89).

As a result of the vacatur, carriers relying on electronic devices to monitor HOS compliance are currently governed by the Agency's previous rules regarding the use of automatic on-board recording devices (49 CFR 395.15). The requirements set forth in 49 CFR 395.15 were not affected by the Seventh Circuit's decision regarding the technical specifications set out in 49 CFR 395.16 in the EOBR 1 Final Rule.

Meeting Participation and Information FMCSA Seeks From the Public

The listening session is open to the public. Speakers' remarks will be limited to five minutes each. The public may submit material to the FMCSA staff at the session for inclusion in the public docket, FMCSA–2010–0167. FMCSA will docket the transcription of the listening session that will be prepared by an official court reporter.

FMCSA tasked the Motor Carrier Safety Advisory Committee (MCSAC) with addressing harassment through Task 12–01, titled, ''Measures to Ensure Electronic On-Board Recorders (EOBRs) Are Not Used to Harass Commercial Motor Vehicle (CMV) Operators''. MCSAC held public meetings on this task on February 7–8, 2012, and based on its deliberations, submitted a report to the FMCSA Administrator on February 8, 2012. This report is available for review at: *http://mcsac.fmcsa.dot.gov/meeting.htm* and the public docket, FMCSA–2010–0167. The questions posed to MCSAC will be used as a template for public comment and discussion at the listening session.

The comments sought from the questions below may be submitted in written form at the session and summarized verbally, if desired:

1. In terms of motor carriers' and enforcement officials' monitoring or review of drivers' records of duty status (RODS), what would constitute driver harassment? Would that definition change based on whether the system for recording HOS is paper or electronically based? If so, how? As a starting point, the Agency is interested in potential forms of harassment, including but not limited to those that are: (1) Not prohibited already by current statutes and regulations; (2) distinct from monitoring for legitimate business purposes (e.g., efforts to maintain or improve productivity); and (3) facilitated or made possible solely by EOBR devices and not as a result of functions or features that motor carriers may choose to purchase, such as fleet management system capabilities. Is this interpretation appropriate? Should it be broader? Or narrower?

2. Are there types of driver harassment to which drivers are uniquely vulnerable if they are using EOBRs rather than paper logs? If so, what and how would use of an EOBR rather than a paper log make a driver more susceptible to harassment? Are there ways in which the use of an EOBR rather than a paper log makes a driver less susceptible to harassment?

3. What types of harassment are motor carrier drivers subjected to currently, how frequently, and to what extent does this harassment happen? How would an electronic device capable of contemporaneous transmission of information to a motor carrier guard against (or fail to guard against) this kind of harassment? What experience have motor carriers and drivers had with carriers using EOBRs as compared to those who do not use these devices in terms of their effect on driver harassment or complaints of driver harassment?

4. What measures should the Agency consider taking to eliminate the potential for EOBRs to be used to harass drivers? Are there specific functions and capabilities of EOBRs that should be restricted to reduce the likelihood of the devices being used to harass vehicle operators?

5. Motor carriers are often responsible for managing their drivers and equipment to optimize efficiency and productivity and to ensure transportation services are provided in accordance with a planned schedule. Carriers commonly use electronic devices, which may include but are not limited to EOBRs, to enhance productivity and optimize fleet operation. Provided such devices are not used to coerce drivers into violating Federal safety regulations, where is the line between legitimate productivity measures and inappropriate oversight or actions that may be construed as harassment?

II. Alternative Media Broadcasts During and Immediately After the Listening Session on March 23, 2012

FMCSA will webcast the listening session on the Internet. Specific information on how to participate via the Internet and the telephone access number will be on the FMCSA Web site at *http://www.fmcsa.dot.gov*. FMCSA will docket the transcripts of the webcast and a separate transcription of the listening session that will be prepared by an official court reporter.

Issued on: February 24, 2012.

William A. Bronrott,

Deputy Administrator.

[FR Doc. 2012–4876 Filed 2–28–12; 8:45 am]

BILLING CODE P

Notices

Federal Register

Vol. 77, No. 40

Wednesday, February 29, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2011–0026]

Changes in Hydric Soils Database Selection Criteria

AGENCY: Natural Resources Conservation Service (NRCS), United States Department of Agriculture.

ACTION: Notice of Changes to the National Soil Information System (NASIS) Database Selection Criteria for Hydric Soils of the United States.

SUMMARY: The National Technical Committee for Hydric Soils (NTCHS) has updated the criteria to select map units components for the hydric soils list. The former database selection criteria created to select soils that may meet the definition of hydric soils did not cover the full extent of what is included in the hydric soils definition. As required by 7 CFR section 12.31, NRCS is hereby providing notice of the changes to the selection criteria for hydric soils as set forth in the NTCHS publication ''Hydric Soils of the United States,'' Miscellaneous Publication 1491, U.S. Department of Agriculture, Soil Conservation Service, June 1991 (see also 60 FR 10349). These changes do not cause any hydric soils to be added or deleted from the list.

DATES: Submit comments on or before March 30, 2012.

ADDRESSES: You may send comments (identified by Docket Number NRCS–2011–0026), which will be available to the public in their entirety, using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://regulations.gov* and follow the instructions for sending comments electronically.
- *Mail:* Anetra Harbor, Policy Analyst, Department of Agriculture, Natural Resources Conservation Service, George Washington Carver Center Building 1–1112D, 5601 Sunnyside Avenue, Beltsville, Maryland 20705.

FOR FURTHER INFORMATION CONTACT: Christopher Smith, NTCHS Chair, Department of Agriculture, Natural Resources Conservation Service, Soil Survey Division, 1400 Independence Avenue SW., Room 4246 South Building, Washington, DC 20250; Telephone: (202) 205–0346; Email: *ChristopherW.Smith@wdc.usda.gov*.

Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at: (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Hydric Soils List Development—New NASIS Database Selection Criteria

The NTCHS has updated the criteria to select map units components for the hydric soils list. The former database selection criteria created to select soils that may meet the definition of hydric soils did not cover the full extent of what is included in the hydric soils definition. As required by 7 CFR section 12.31, NRCS is hereby providing notice of the changes to the selection criteria for hydric soils as set forth in the NTCHS publication ''Hydric Soils of the United States,'' Miscellaneous Publication 1491, U.S. Department of Agriculture, Soil Conservation Service, June 1991 (see also 60 FR 10349). These changes do not cause any hydric soils to be added or deleted from the list.

Due to issues with database population, it was easier for a soil scientist to individually populate a field that identified those soil map unit components that meet the definition of hydric soils and which criterion or criteria the soil met rather than to auto-populate using the developed query. The list has evolved from a national list of hydric soil series that may be hydric to a comprehensive list of all map units that have at least one map unit component that is hydric. The list also provides information on what component is at least in part hydric and where it is located on the landscape. Since map unit components may consist of soil series that cross the hydric/non-hydric boundary, a map unit component listed as hydric may also include portions that are non-hydric. The updated criteria are as follows:

(1) All Histels except Folistels and Histosols except Folists; or

(2) Map unit components in Aquic suborders, great groups, or subgroups, Albolls suborder, Historthels great group, Histoturbels great group, or Andic, Cumulic, Pachic, or Vitrandic subgroups that:

(a) Based on the range of characteristics for the soil series, will at least in part meet one or more Field Indicators of Hydric Soils in the United States, or

(b) Show evidence that the soil meets the definition of a hydric soil;

(3) Map unit components that are frequently ponded for long duration or very long duration during the growing season that:

(a) Based on the range of characteristics for the soil series, will at least in part meet one or more Field Indicators of Hydric Soils in the United States, or

(b) Show evidence that the soil meets the definition of a hydric soil; or

(4) Map unit components that are frequently flooded for long duration or very long duration during the growing season that:

(a) Based on the range of characteristics for the soil series, will at least in part meet one or more Field Indicators of Hydric Soils in the United States, or

(b) Show evidence that the soils meet the definition of a hydric soil.

Glossary of Terms Used in Hydric Soils Criteria

Anaerobic means a situation in which molecular oxygen is virtually absent from the environment.

Artificial hydric soil means a soil that meets the definition of a hydric soil as a result of an artificially induced hydrologic regime and did not meet the definition before the artificial measures were applied.

Drained means a condition in which ground or surface water has been removed by artificial means.

Flooded means a condition in which the soil surface is temporarily covered with flowing water from any source, such as streams overflowing their banks, runoff from adjacent or surrounding slopes, inflow from the high tides, or any combination of sources.

Frequently flooded, ponded, saturated: a frequency class in which flooding, ponding, or saturation is likely to occur often under usual weather conditions (more than 50 percent chance in any year, or more than 50 times in 100 years).

Hydric soil means a soil that formed under conditions of saturation, flooding, or ponding

long enough during the growing season to develop anaerobic conditions in the upper part. This definition includes soils that developed under anaerobic conditions in the upper part but no longer experience these conditions due to hydrologic alteration such as those hydric soils that have been artificially drained or protected (e.g., ditches or levees) (*http://soils.usda.gov/use/hydric/intro.html*).

Long duration means a duration class in which inundation for a single event ranges from 7 days to 1 month.

Map unit means a collection of areas defined and named the same in terms of their soil components or miscellaneous areas or both.

Map unit components means the collection of soils and miscellaneous areas found within a map unit.

Phase, map unit means a subdivision of a map unit based on features that affect its use and management (e.g., slope, surface texture, stoniness, and thickness).

Ponded means a condition in which water stands in a closed depression. The water is removed only by percolation, evaporation, or transpiration.

Very long duration means a duration class in which innundation for a single event is greater than 1 month.

What's included on the hydric soils lists?

National List

''Hydric Soils of the United States'' is a compilation of all map units with either a major or minor component that is at least in part hydric. This could include components that are soil series, components that are classified at categories higher than the series level in Soil Taxonomy, and miscellaneous land types. Because the list includes both major and minor (small) percentages for map units, in some cases most of the map unit may not be hydric. Also, some components may be phases of soil series that have a range of characteristics that both meet and do not meet hydric indicator requirements; therefore, only a portion of that component's concept (or range in characteristics) may in fact be hydric. The list is useful in identifying map units that may contain hydric soils. The national list is generated once per calendar year (usually in January or February) to satisfy legislated mandates.

The NRCS Hydric Soils Lists, available at *ftp://ftp-fc.sc.egov.usda.gov/NSSC/Hydric_Soils/Lists/hydric_soils.xlsx*, are by soil map unit component. Detailed and up-to-date hydric soil lists (e.g., by soil survey area map unit component) are maintained by the NRCS State offices and local field offices and can be downloaded from the Soil Data Mart at: *http://soildatamart.nrcs.usda.gov/*.

State Lists

The State lists are subsets of the national hydric soils list by State. For more detailed State lists by map unit, contact the appropriate NRCS State office.

Local Lists

NRCS has developed local lists of map units that contain hydric soils for each county, parish, or soil survey area in the United States. These local lists are available at the NRCS State offices, local NRCS field office, and on the Soil Data Mart at: *http://soildatamart.nrcs.usda.gov/* and are the preferred lists for use in making preliminary wetland determinations. Information from the Soil Data Mart is the most up-to-date information as well as the official soil survey information. Since the national list is only compiled once a year and Soil Data Mart may be updated on a more frequent basis, the Soil Data Mart should be deferred to when there is a discrepancy.

Signed this 22nd day of February, 2012, in Washington, DC.

Dave White,

Chief, Natural Resources Conservation Service.

[FR Doc. 2012–4733 Filed 2–28–12; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Meeting of the National Advisory Council on Innovation and Entrepreneurship

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The National Advisory Council on Innovation and Entrepreneurship will hold a meeting on Tuesday, March 13, 2012. The open meeting will be conducted from 10 a.m.–1 p.m. and will be open to the public. The meeting will take place at Gallier Hall, 545 St. Charles Avenue, New Orleans, LA 70130. The Council was chartered on November 10, 2009 to advise the Secretary of Commerce on matters relating to innovation and entrepreneurship in the United States.

DATES: March 13, 2012.

Time: 10 a.m.–1 p.m. (CST).

ADDRESSES: Gallier Hall, 545 St. Charles Avenue, New Orleans, LA 70130. Please specify any special requests for participation five business days in advance. Last minute requests will be accepted, but may be impossible to complete.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss the implementation of the components of the University President's letter organized by the National Advisory Council on Innovation and Entrepreneurship, discuss further policy implications of this letter and its efforts, and to hear from entrepreneurs in New Orleans. Specific topics for discussion include student entrepreneurship, high-growth entrepreneurship, technology transfer, and the opportunities and challenges for entrepreneurs in New Orleans, and how the United States government can support them. The final agenda will be posted on the U.S. Department of Commerce Web site at *www.commerce.gov.* Any member of the public may submit pertinent written comments concerning the Council's affairs at any time before or after the meeting. Comments may be submitted to Nish Acharya at the contact information indicated below. Copies of meeting minutes will be available within 90 days.

FOR FURTHER INFORMATION CONTACT: Nish Acharya, Office of Innovation and Entrepreneurship, Room 7019, 1401 Constitution Avenue NW., Washington DC 20230, telephone 202–482–4068; fax: 202–273–4781. Please reference, ''NACIE March 13, 2012'' in the subject line of your fax.

Dated: February 24, 2012.

Nishith H. Acharya,

Director, Office of Innovation & Entrepreneurship, U.S. Department of Commerce.

[FR Doc. 2012–4868 Filed 2–28–12; 8:45 am]

BILLING CODE 3510–03–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–890

Wooden Bedroom Furniture From the People's Republic of China: Initiation of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') has received requests to conduct an administrative review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China (''PRC''). The anniversary month of this order is January. In accordance with the Department's regulations, we are initiating this administrative review.

DATES: *Effective Date:* February 29, 2012.

FOR FURTHER INFORMATION CONTACT: Rebecca Pandolph or Patrick O'Connor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–3627 or (202) 482–0989 respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests, in accordance with 19 CFR 351.213(b), for an administrative review of the antidumping duty order on wooden bedroom furniture from the PRC covering multiple entities.[1] The Department is now initiating an administrative review of the order covering those entities. All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the Department within 60 days of publication of this notice in the **Federal Register**.[2] All submissions must be filed electronically at *http://iaaccess.trade.gov* in accordance with 19 CFR 351.303.[3] Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''Act''). Further, in accordance with 19 CFR 351.303(f)(3)(ii), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

Respondent Selection

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2)(B) of the Act permits the Department to examine exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined. Due to the large number of firms for which an administrative review of wooden bedroom furniture has been requested, and the Department's experience regarding the resulting administrative burden of reviewing each company for which a request has been made, the Department is considering exercising its authority to limit the number of respondents selected for review in accordance with the Act.

In the event that the Department limits the number of respondents for individual examination in the administrative review of wooden bedroom furniture, the Department intends to select respondents based on volume data contained in responses to Q&V questionnaires. Further, the Department intends to limit the number of Q&V questionnaires issued in the review based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports of wooden bedroom furniture from the PRC. Since the units used to measure import quantities are not consistent across the Harmonized Tariff Schedule of the United States headings identified in the scope of the order on wooden bedroom furniture from the PRC, the Department will limit the number of Q&V questionnaires issued based on the import values in CBP data which will serve as a proxy for import quantities. Parties subject to the review to which the Department does not send a Q&V questionnaire may file a response to the Q&V questionnaire by the applicable deadline if they desire to be included in the pool of companies from which the Department will select mandatory respondents. Parties will be given the opportunity to comment on the CBP data used by the Department to limit the number of Q&V questionnaires issued. We intend to release the CBP data under administrative protective order (''APO'') to all parties having an APO within seven days of publication of this notice in the **Federal Register**. The Department invites comments regarding CBP data and respondent selection within five days of placement of the CBP data on the record.

In this case, the Department has decided to send Q&V questionnaires to the 20 companies for which reviews were requested with the largest total values of subject merchandise imported into the United States during the POR according to CBP data. The Department will issue the Q&V questionnaires the day after this notice is signed. In addition, the Q&V questionnaire will be available on the Department's Web site at *http://trade.gov/ia/* on the date this notice is signed. The responses to the Q&V questionnaire must be received by the Department by March 15, 2012. Please be advised that due to the time constraints imposed by the statutory and regulatory deadlines for antidumping duty administrative reviews, the Department does not intend to grant any extensions for the submission of responses to the Q&V questionnaire.

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Q&V questionnaire for purposes of respondent selection, in general each company must report Q&V data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People's Republic of China,* 70 FR 329 (January 4, 2005).

[2] Producers or exporters may also fulfill this requirement by submitting a properly filed and timely quantity and value (''Q&V'') questionnaire response that indicates that the entity or entities had no exports, sales, or entries of subject merchandise during the POR. *See* discussion *infra* providing further information regarding Q&V questionnaires.

[3] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after August 2011, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under criteria arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate-rates test, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate-rate status in this administrative review must complete, as appropriate, either a separate-rate certification or application, as described below. In order to demonstrate separate-rate eligibility, the Department requires entities for which a review was requested and that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://ia.ita.doc.gov/nme/nme-sep-rate.html.* In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding[4] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[5] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on the Department's Web site at *http://ia.ita.doc.gov/nme/nme-sep-rate.html.* In responding to the Separate Rate Application, refer to the instructions contained in the application. Separate Rate Applications are due to the Department no later than 60 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate-rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Notification

This notice constitutes public notification to all firms for which an administrative review of wooden bedroom furniture has been requested and that are seeking separate rate status in that review, that they must submit a timely Separate Rate Application or Certification (as appropriate) as described above, in order to receive consideration for separate-rate status. Firms to which the Department issues a Q&V questionnaire must submit a timely and complete response to the Q&V questionnaire, in addition to a timely and complete Separate Rate Application or Certification in order to receive consideration for separate-rate status. In other words, the Department will not give consideration to any timely Separate Rate Certification or Application made by parties to whom the Department issued a Q&V questionnaire but who failed to respond in a timely manner to the Q&V questionnaire. Exporters subject to the review to which the Department does not send a Q&V questionnaire may receive consideration for separate-rate status if they file a timely Separate Rate Application or a timely Separate Rate Certification without filing a response to the Q&V questionnaire. All information submitted by respondents in this administrative review is subject to verification. As noted above, the Separate Rate Certification, the Separate Rate Application, and the Q&V questionnaire will be available on the Department's Web site on the date of publication of this notice in the **Federal Register**.

Initiation of Review

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating an administrative review of the antidumping duty order on wooden bedroom furniture from the PRC with respect to the following companies, for the January 1, 2011, through December 31, 2011, POR. We intend to issue the final results of this review no later than January 31, 2013.

- Alexandre International Corp.;* Southern Art Development Ltd.;* Alexandre Furniture (Shenzhen) Co.,

[4] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceedings (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[5] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

Ltd.;* Southern Art Furniture Factory.*
- Art Heritage International, Ltd.;* Super Art Furniture Co., Ltd.;* Artwork Metal & Plastic Co., Ltd.;* Jibson Industries Ltd.;* Always Loyal International*
- Baigou Crafts Factory of Fengkai*
- Billy Wood Industrial (Dong Guan) Co., Ltd.;* Great Union Industrial (Dongguan) Co., Ltd.;* Time Faith Ltd.*
- Brother Furniture Manufacture Co., Ltd.
- C.F. Kent Co., Inc.
- C.F. Kent Hospitality, Inc.
- Champion Sun Industries Limited
- Changshu HTC Import & Export Co., Ltd.*
- Cheng Meng Furniture (Pte) Ltd.;* Cheng Meng Decoration & Furniture (Suzhou) Co., Ltd.*
- Chuan Fa Furniture Factory*
- Clearwise Company Limited*
- COE Ltd.*
- Contact Co., Ltd.
- Creation Industries Co., Ltd.
- Dalian Huafeng Furniture Co., Ltd.*/ Dalian Huafeng Furniture Group Co., Ltd.*
- Decca Furniture Ltd.*
- Denny's Furniture Associates Corp.
- Denny's International Co., Ltd.
- Der Chang Wooden Works
- Der Cheng Furniture Co., Ltd.
- Dong Guan Golden Fortune Houseware Co., Ltd.
- Dongguan Bon Ten Furniture Co., Ltd.*
- Dongguan Cambridge Furniture Co., Ltd.;* Glory Oceanic Co., Ltd.*
- Dongguan Chunsan Wood Products Co., Ltd.
- Dongguan Creation Furniture Co., Ltd.
- Dongguan Grand Style Furniture Co., Ltd.;* Hong Kong Da Zhi Furniture Co., Ltd.*
- Dongguan Great Reputation Furniture Co., Ltd.*
- Dongguan Haoshun Furniture Ltd.
- Dongguan Hero Way Woodwork Co., Ltd.;* Dongguan Da Zhong Woodwork Co., Ltd.;* Hero Way Enterprises Ltd.;* Well Earth International Ltd.*
- Dongguan Hua Ban Furniture Co., Ltd.
- Dongguan Huansheng Furniture Co., Ltd.*
- Dongguan Hung Sheng Artware Products Co., Ltd.;* Coronal Enterprise Co., Ltd.*
- Dongguan Kin Feng Furniture Co., Ltd.*
- Dongguan Kingstone Furniture Co., Ltd.;* Kingstone Furniture Co., Ltd.*
- Dongguan Landmark Furniture Products Ltd.
- Dongguan Liaobushangdun Huada Furniture Factory;* Great Rich (Hk) Enterprises Co., Ltd.*
- Dongguan Lung Dong Furniture Co., Ltd.;* Dongguan Dong He Furniture Co., Ltd.*
- Dongguan Mingsheng Furniture Co., Ltd.*
- Dongguan Mu Si Furniture Co., Ltd.*
- Dongguan Singways Furniture Co., Ltd.*
- Dongguan Sundart Timber Products Co., Ltd.
- Dongguan Sunrise Furniture Co.
- Dongguan Sunrise Furniture Co., Ltd.;* Taicang Sunrise Wood Industry Co., Ltd.;* Taicang Fairmount Designs Furniture Co., Ltd.;* Meizhou Sunrise Furniture Co., Ltd.*
- Dongguan Sunshine Furniture Co., Ltd.*
- Dongguan Yihaiwei Furniture Limited.*
- Dongguan Yujia Furniture Co., Ltd.*
- Dongying Huanghekou Furniture Industry Co., Ltd.*
- Dorbest Ltd.;* Rui Feng Woodwork Co., Ltd. aka Rui Feng Woodwork (Dongguan) Co., Ltd.;* Rui Feng Lumber Development Co., Ltd. aka Rui Feng Lumber Development (Shenzhen) Co., Ltd.*
- Eurosa (Kunshan) Co., Ltd.;* Eurosa Furniture Co., (Pte) Ltd.*
- Ever Spring Furniture Co., Ltd.
- Evershine Enterprise Co.
- Fairmont Designs
- Fine Furniture (Shanghai) Ltd.*
- Fleetwood Fine Furniture Lp.
- Foliot Furniture Inc.
- Foliot Furniture Corporation
- Foliot Furniture Pacific Inc.
- Forward Win Enterprises Co. Ltd.
- Foshan Guanqiu Furniture Co., Ltd.
- Fuijian Lianfu Forestry Co, Ltd. aka Fujian Wonder Pacific Inc.;* Fuzhou Huan Mei Furniture Co., Ltd.;* Jiangsu Dare*
- Fujian Putian Jinggong Furniture Co., Ltd.
- Gainwell Industries Limited
- Garri Furniture (Dong Guan) Co., Ltd.;* Molabile International, Inc.;* Weei Geo Enterprise Co., Ltd.*
- Golden Well International (HK) Ltd.*
- Gotop Global Inc.
- Gotop Global Ltd.
- Green River Wood (Dongguan) Ltd.
- Guangdong Gainwell Industrial Furniture Co., Ltd.
- Guangdong Sunwin Green Furniture Industry Group Co., Ltd.
- Guangzhou Maria Yee Furnishings Ltd.;* Pyla HK, Ltd.;* Maria Yee, Inc.*
- Hainan Jong Bao Lumber Co., Ltd.;* Jibbon Enterprise Co., Ltd.*
- Hang Hai Woodcraft's Art Factory*
- Hangzhou Cadman Trading Co., Ltd.*
- Hong Kong Jingbi Group
- Hualing Furniture (China) Co., Ltd.;* Tony House Manufacture (China) Co., Ltd.;* Buysell Investments Ltd.;* Tony House Industries Co., Ltd.*
- Huasen Furniture Co., Ltd.
- Jardine Enterprise, Ltd.*
- Jiangmen Kinwai Furniture Decoration Co., Ltd.*
- Jiangmen Kinwai International Furniture Co., Ltd.*
- Jiangsu Weifu Group Fullhouse Furniture Manufacturing Corp.
- Jiangsu Xiangsheng Bedtime Furniture Co., Ltd.*
- Jiangsu Yuexing Furniture Group Co., Ltd.*
- Jiant Furniture Co., Ltd.
- Jiedong Lehouse Furniture Co., Ltd.*
- King Kei Trading Company Limited
- King's Way Furniture Industries Co., Ltd.
- Kingsyear, Ltd.
- Kuan Lin Furniture (Dong Guan) Co., Ltd.;* Kuan Lin Furniture Factory;* Kuan Lin Furniture Co., Ltd.*
- Kunshan Lee Wood Product Co., Ltd.*
- Kunshan Summit Furniture Co., Ltd.*
- Langfang Tiancheng Furniture Co., Ltd.*
- Leefu Wood (Dongguan) Co., Ltd.;* King Rich International, Ltd.*
- Link Silver Ltd. (V.I.B.)
- Locke Furniture Factory;* Kai Chan Furniture Co., Ltd.;* Kai Chan (Hong Kong) Enterprise Ltd.;* Taiwan Kai Chan Co., Ltd.*
- Longkou Huangshan Furniture Factory.*
- Longrange Furniture Co., Ltd.*
- Marvin Furniture (Shanghai) Co. Ltd.
- Meikangchi (Nantong) Furniture Company Ltd.*
- Meubles Foliot Inc.
- Moonart Furniture Group
- Moonart International Inc.
- Nanhai Baiyi Woodwork Co., Ltd.*
- Nanhai Jiantai Woodwork Co., Ltd.;* Fortune Glory Industrial Ltd. (H.K. Ltd.)*
- Nanjing Jardine Enterprises, Ltd.
- Nanjing Nanmu Furniture Co., Ltd.*
- Nantong Dongfang Orient Furniture Co., Ltd.*
- Nantong Yangzi Furniture Co., Ltd.
- Nantong Yushi Furniture Co., Ltd.
- Nathan International Ltd.;* Nathan Rattan Factory*
- Ningbo Fubang Furniture Industries Limited
- Ningbo Furniture Industries Company Ltd.
- Ningbo Techniwood Furniture Industries Limited
- Northeast Lumber Co., Ltd.
- Passwell Corporation; * Pleasant Wave Ltd.*
- Passwell Wood Corporation
- Perfect Line Furniture Co., Ltd.*
- Prime Wood International Co., Ltd; * Prime Best International Co., Ltd.; * Prime Best Factory; * Liang Huang (Jiaxing) Enterprise Co., Ltd.*

- Putian Jinggong Furniture Co., Ltd.*
- Qingdao Liangmu Co., Ltd.*
- Qingdao Shengchang Wooden Co., Ltd.*
- Restonic (Dongguan) Furniture Ltd.; * Restonic Far East (Samoa) Ltd.*
- Rizhao Sanmu Woodworking Co., Ltd.*
- S.Y.C Family Enterprise Co., Ltd.
- Samso Industries Ltd.
- Season Furniture Manufacturing Co.; * Season Industrial Development Co.*
- Sen Yeong International Co., Ltd.; * Sheh Hau International Trading Ltd.*
- Senyuan Furniture Group.
- Shanghai Aosen Furniture Co., Ltd.
- Shanghai Fangjia Industry Co. Ltd.*
- Shanghai Hospitality Product Mfg., Co., Ltd.
- Shanghai Industries Group
- Shanghai Jian Pu Export & Import Co., Ltd.*
- Shanghai Kent Furniture Co., Ltd.
- Shanghai Maoji Imp and Exp Co., Ltd.*
- Shanghai Season Industry & Commerce Co., Ltd.
- Shanghai Sunrise Furniture Co., Ltd.
- Shanghai Zhiyi (Jiashun) Furniture Co., Ltd.
- Shanghai Zhiyi Furniture and Decoration Co., Ltd.
- Shaoxing Mengxing Furniture Co., Ltd.
- Sheng Jing Wood Products (Beijing) Co., Ltd.; * Telstar Enterprises Ltd.*
- Shenyang Shining Dongxing Furniture Co., Ltd.*
- Shenzhen Forest Furniture Co., Ltd.*
- Shenzhen Jiafa High Grade Furniture Co., Ltd.; * Golden Lion International Trading Ltd.*
- Shenzhen New Fudu Furniture Co., Ltd.*
- Shenzhen Shen Long Hang Industry Co., Ltd.*
- Shenzhen Wonderful Furniture Co., Ltd.*
- Shenzhen Xiande Furniture Factory
- Shing Mark Enterprise Co., Ltd.; * Carven Industries Limited (BVI); * Carven Industries Limited (HK); * Dongguan Zhenxin Furniture Co., Ltd.; * Dongguan Yongpeng Furniture Co., Ltd.*
- Shun Feng Furniture Co., Ltd.*
- Songgang Jasonwood Furniture Factory; * Jasonwood Industrial Co., Ltd. S.A.*
- Starwood Furniture Manufacturing Co., Ltd.
- Starwood Industries Ltd.*
- Strongson Furniture (Shenzhen) Co., Ltd.; * Strongson Furniture Co., Ltd.; * Strongson (HK) Co.*
- Sundart International, Ltd.
- Sunforce Furniture (Hui-Yang) Co., Ltd.; * Sun Fung Wooden Factory; * Sun Fung Co.; * Shin Feng Furniture Co., Ltd.; * Stupendous International Co., Ltd.*
- Superwood Co., Ltd.; * Lianjiang Zongyu Art Products Co., Ltd.*
- Tarzan Furniture Industries, Ltd.
- Teamway Furniture (Dong Guan) Ltd.; * Brittomart Inc.*
- Techniwood (Macao Commercial Offshore) Limited.
- Techniwood Industries Ltd.; * Ningbo Furniture Industries Limited; * Ningbo Hengrun Furniture Co. Ltd.*
- Tianjin Fortune Furniture Co., Ltd.*
- Tianjin Master Home Furniture Company
- Tianjin Phu Shing Woodwork Enterprise Co., Ltd.*
- Tradewinds Furniture Ltd.; * Fortune Glory Industrial Ltd. (H. K. Ltd.)*
- Tradewinds International Enterprise Ltd.
- Transworld (Zhang Zhou) Furniture Co. Ltd.*
- Trendex Industries Limited
- Tube-Smith Enterprise (Zhangzhou) Co., Ltd.; * Tube-Smith Enterprise (Haimen) Co., Ltd.; * Billionworth Enterprises Ltd.*
- U-Rich Furniture (Zhangzhou) Co., Ltd.; * U-Rich Furniture Ltd.*
- Wan Bao Chen Group Hong Kong Co., Ltd.
- Wanhengtong Nueevder (Furniture) Manufacture Co., Ltd.;* Dongguan Wanengtong Industry Co., Ltd.*
- Wanvog Furniture (Kunshan) Co., Ltd.*
- Winny Overseas, Ltd.; * Zhongshan Winny Furniture Ltd.; * Winny Universal Ltd.*
- Woodworth Wooden Industries (Dong Guan) Co., Ltd.*
- World Design International Co., Ltd.
- Xiamen Yongquan Sci-Tech Development Co., Ltd.*
- Xilinmen Furniture Co., Ltd.*
- Xingli Arts & Crafts Factory of Yangchun
- Yeh Brothers World Trade, Inc.*
- Yihua Timber Industry Co., Ltd.; * Guangdong Yihua Timber Industry Co., Ltd.*
- Yuexing Group Co., Ltd.
- Zhang Zhou Sanlong Wood Product Co., Ltd.*
- Zhangjiagang Daye Hotel Furniture Co., Ltd.*
- Zhangjiagang Zheng Yan Decoration Co., Ltd.*
- Zhangjiang Sunwin Arts & Crafts Co., Ltd.*
- Zhangzhou Guohui Industrial & Trade Co. Ltd.*
- Zhejiang Shaoxing Huaweimei Furniture Co., Ltd.
- Zhejiang Tianyi Scientific & Educational Equipment Co., Ltd.*
- Zhong Shan Fullwin Furniture Co., Ltd.*
- Zhong Shan Heng Fu Furniture Co.
- Zhongshan Fengheng Furniture Co., Ltd.
- Zhongshan Fookyik Furniture Co., Ltd.*
- Zhongshan Gainwell Furniture Co., Ltd.
- Zhongshan Golden King Furniture Industrial Co., Ltd.*
- Zhongshan Gotop Furniture Co., Ltd
- Zhongshang Yiming Furniture Co., Ltd.
- Zhoushan For-Strong Wood Co., Ltd.*

* These companies had a separate rate in the most recently completed segment of this proceeding in which they participated.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to the administrative review of the antidumping duty order on wooden bedroom furniture from the PRC which is being initiated through this notice. Parties that wish to participate in the antidumping duty administrative review of wooden bedroom furniture from the PRC should ensure that they meet the requirements in these procedures (*e.g.* the filing of separate letters of appearance as discussed in 19 CFR 351.103 (d)).

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness

of that information.[6] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011.[7] The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011 if the submitting party does not comply with the revised certification requirements.

This initiation and notice are in accordance with section 751(a) of the Act (19 USC 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: February 23, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–4839 Filed 2–28–12; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See* section 782(b) of the Act.

[7] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule*''), amending 19 CFR 351.303(g)(1) and (2).

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before March 20, 2012. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 12–004. *Applicant:* Max Planck Florida Institute, 5353 Parkside Dr MC 19–RE, Jupiter, FL 33458. *Instrument:* Freeze Fracture/Freeze Etch device. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used to reveal the two-dimensional localization of membrane proteins using freeze fracture replica immuno-gold labeling, including all kinds of receptors and channels. Because freeze-fracture replica immuno-gold labeling has a high sensitivity for the detection of the epitope of the target molecules, small numbers of receptors that would be easily missed by LM or by conventional immuno-EM can be revealed using this instrument in particular unknown subcellular locations. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* February 8, 2012.

Dated: February 22, 2012.

Gregory Campbell,

Director, IA Subsidies Enforcement Office.

[FR Doc. 2012–4837 Filed 2–28–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before March 20, 2012. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 11–074. *Applicant:* Howard Hughes Medical Institute, 4000 Jones Bridge Rd., Chevy Chase, MD 20815. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will be used to understand how proteins interact with DNA, with a focus on proteins that are involved in DNA damage recognition and repair. The experiments will consist of direct visual observations of fluorescently tagged DNA and DNA-bound protein molecules using total internal reflection fluorescence microscopy. The instrument will provide the capability to generate ''DNA Curtains.'' *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: December 21, 2011.

Docket Number: 12–002. *Applicant:* National Center for Toxicological Research, 3900 NCTR Rd., Jefferson, AR 72079. *Instrument:* Electron Microscope. *Manufacturer:* JEOL Instruments, Japan. *Intended Use:* The instrument will be used to determine the toxicity of nanoscale metal oxides culutured cells, quantifying the distribution and toxicity of nanoscale silver and metal oxides, and determining the genotoxicity of nanoscale materials in cultured cells. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: January 10, 2012.

Docket Number: 12–005. Applicant: VA Palo Alto Health Care System, Azhar Lab, Bldg 4, Room C320, 3801 Miranda Ave., Palo Alto, CA 94304–1207. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will be used to study cell cultures and lab animal tissue specimens for verification of normal morphological features or morphological changes, as well as searching for proteins of interest labeled with commercially available colloidal gold conjugated to antibodies. Cellular organelles can be clearly seen and identified using this instrument, which would not be visible with a light microscope. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: February 8, 2012.

Docket Number: 12–006. Applicant: William Patterson University, 300 Pompon Rd., Wayne, NJ 07470. *Instrument:* Electron Microscope. *Manufacturer:* Hitachi High Technologies America Inc, Japan. *Intended Use:* The instrument will be used to study specimens including animal tissues, bacteria, insects and parasites, involving the examination of their morphological and structural features. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: February 13, 2012.

Dated: February 22, 2012.

Gregory Campbell,

Director, IA Subsidies Enforcement Office.

[FR Doc. 2012–4838 Filed 2–28–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Smart Grid Trade Mission to the United Kingdom; London, United Kingdom, October 15–17, 2012

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The United States Department of Commerce International Trade Administration's (ITA) U.S. and Foreign Commercial Service (USFCS) in London is organizing a Smart Grid Trade Mission to the United Kingdom, October 15–17, 2012.

The Smart Grid Trade Mission offers a timely and cost-effective means for U.S. firms to engage with key stakeholders and to enter the promising UK market for smart grid equipment, technology and services. Target sectors holding high potential for U.S exporters include: smart meters and advanced metering infrastructure; communication and data management software and services; grid optimization technologies; demand response and control systems; cyber security software and services; transmission and distribution equipment; automation technologies; and consumer engagement platforms and services.

Advancing President Obama's goal of positioning the United States as the leading exporter of clean energy technologies, the mission will support the Renewable Energy and Energy Efficiency Export Initiative's (RE4I) goals by promoting export opportunities for innovative U.S. companies active in the smart grid sector. With a focus on connecting U.S. companies with the major players in the UK electricity sector, this mission will provide critical market information and will help participants establish business and government contacts who are involved in smart grid and energy efficiency projects in the United Kingdom. The three-day agenda will include meetings with high-level national government officials and industry leaders; briefings on the UK market and the wider European Union market; site visits; seminars; and networking opportunities in and around the London area.

The delegation will be comprised of at least 15 U.S. firms and a maximum of 25 U.S. firms representing a cross-section of U.S. industries that have developed products and services for the smart grid. The mission will also be open to representatives of U.S. trade associations in the targeted industries with a commercial interest in the United Kingdom.

Commercial Setting

According to the ''Doing Business 2011'' report from the World Bank, the United Kingdom is the best place to do business in the EU and G8 countries: the report ranks the United Kingdom first in Europe and fourth in the world for ease of doing business.

The United Kingdom has the seventh-largest economy in the world and is a major international trading power. Highly developed, sophisticated, and diversified, the UK market is the single largest export market for U.S. services exports and the fifth largest in the world for U.S. goods exports. With few trade barriers, the United Kingdom is in fact the entry market into the EU for more than 40,000 U.S. exporters.

Annual U.S. exports to the United Kingdom of both goods and services are valued at more than $100 billion. The U.S.-UK investment relationship is the largest in the world with a cumulative bilateral stock in direct investment valued at over $925 billion, creating over two million jobs, about one million in each country, to manage and drive this investment.

Over 7,500 U.S. firms maintain a presence in the United Kingdom, many of which serve as regional headquarters for companies covering Europe, the Middle East, and Africa. Furthermore, London is a major international financial hub. Ranked by the Economist Intelligence Unit to be ahead of other major European economies in the global digital economy index, the United Kingdom offers world class Information and Communication Technology infrastructure.

The UK government has committed to reducing the country's carbon emissions by 34% of 1990 levels by 2020 and by 80% of 1990 levels by 2050. Power generation is a major source of carbon emissions, with 74% of power generated in the United Kingdom coming from fossil fuels. As the government seeks to reduce dependency on fossil fuels, it plans to refurbish its existing electricity infrastructure and establish a smart grid.

Consequently, over $300 billion of investment is needed over the next ten years to replace older power plants and upgrade the grid—twice the rate of investment seen in the previous decade. The United Kingdom's determination to become a low carbon economy should create many opportunities for innovative U.S. companies to supply ''green'' solutions to help the United Kingdom supply sustainable, reliable, and secure, low carbon energy sources while providing the technologies and services that enable energy efficiency gains for electricity consumers.

The smart grid sector is developing rapidly in the European Union. The United Kingdom is at the forefront, with major U.S. companies already providing smart grid solutions for electric utilities in the region. The challenge of efficiently transmitting and distributing ever increasing amounts of electricity from intermittent and geographically spread renewable sources, like wind turbines and solar panels, creates a need for the utility and related industries to modernize and reinvent the way electricity is transmitted, distributed and consumed.

To achieve this, electricity utilities in the United Kingdom will have to invest in information and communication technologies, as well as enhanced system monitoring and intelligent controls that will be needed to securely manage a much more complex system, while meeting the demand for energy with the optimum level of generation and network capacity.

In 2008, the UK Government announced that gas and electricity smart meters would be rolled out by energy suppliers to every home and most small businesses in Britain by the end of 2020. The mass roll-out of smart meters is expected to begin in 2014. Some 54 million gas and electricity meters will need to be replaced over 10 years at an expected cost of $18 billion.

To stimulate innovation in the sector, the Government has launched a $10 million UK Smart Grid Demonstration Fund for small projects and has made $825 million available through the Low Carbon Networks Fund for larger scale trials. This has led to a number of UK smart technology pilot projects that are already underway or in the planning stages. In addition to government-led smart grid initiatives, private sector utilities are expected to invest more than $65 billion in the upgrade and expansion of the UK's transmission and distribution networks.

Current studies indicate that 60% of UK companies in the energy market plan to invest in smart grids over the next three years, with a quarter of these firms already having committed money. This level of investment by government and energy companies signals the potential commercial opportunities in the UK market. It is not surprising,

therefore, that the sector has attracted interest from a wide range of industry players—from small startups and SMEs to global corporations.

The market is expected to grow from $380 million in 2010 to $4.5 billion in 2015. An early entry into the UK smart grid industry could help technology, equipment and specialist service companies to become leading players in the global energy services market. Pilot projects undertaken in the UK market can serve as a benchmark to provide U.S. companies with early adopter opportunities in other European countries and in the global market.

Emerging opportunities in the UK smart grid market encompass a range of technology and service segments associated with electricity transmission and distribution, energy data management, and energy efficiency applications, such as:

- Smart meters and advanced metering infrastructure;
- Meter data management software and systems;
- Demand response control systems and services;
- Grid optimization systems and technologies;
- Energy management systems for distributed generation and storage;
- Utility cyber security services;
- Home area networking technologies;
- Consumer electronic smart devices, applications, and energy efficiency software and services; and
- Home and building energy management programs and marketing campaigns.

Additionally, opportunities in the UK smart grid sector will emerge for firms specializing in the provision of utility information management systems, billing software and services, cyber security services, and other utility back-end information technology solutions.

In April 2012, the United Kingdom will host the 2012 Clean Energy Ministerial, an important platform developed under the auspices of the United Nations Framework Convention on Climate Change to advance international and public-private collaboration on the adoption and deployment of clean energy technologies worldwide. One of the Clean Energy Ministerial activities is the International Smart Grid Action Network (ISGAN), a mechanism through which multinational stakeholders can collaborate on accelerating the development and deployment of smarter electric grids around the world. ISGAN aims to improve the understanding of smart grid technologies, practices, and systems and to promote adoption of related enabling government policies. U.S. Secretary of Energy Steven Chu will co-host the 2012 Clean Energy Ministerial.

Mission Goals

The mission will help U.S. companies increase their export potential to the United Kingdom by identifying profitable opportunities in the UK smart grid and electricity markets. As such, the mission will focus on helping U.S. companies obtain market information, establish business and government contacts, solidify business strategies, and/or advance specific projects.

The mission's goals include:

- Facilitating first-hand market exposure and access to government decision makers and key private-sector industry contacts, including potential trading partners;
- Promoting the U.S. green economy by connecting representatives of U.S. companies focused on low carbon technologies with potential trading partners;
- Helping companies gain valuable international business experience in the rapidly growing smart grid market; and
- Helping U.S. companies strengthen their engagement in the worldwide marketplace, leading to increased exports and, in turn, job creation.

Mission Scenario

Participants will attend country briefings, seminars and meetings with government decision makers and key private-sector industry contacts, including potential trading partners. Participants will also receive briefing on the European Union-wide perspective on smart grids.

Networking events will provide mission participants with further opportunities to speak with local business and government representatives, as well as with business executives of major U.S. companies already established in the United Kingdom.

The precise agenda will depend upon the availability of local government and private sector officials, as well as on the specific goals and makeup of the mission participants.

The U.S Commercial Service in London stands ready to assist the participants.

Proposed Timetable

Monday, October 15, 2012

- Country briefing by U.S. Embassy staff on programs and opportunities in the UK and EU smart grid sector.
- Ice-breaker reception at the Embassy of the United States of America, London.

Tuesday, October 16, 2012

- Seminar on UK and European smart grid markets. The seminar will provide market information to identify profitable opportunities. Speakers will include government officials, trade associations, senior industry representatives, and experts on the various aspects of smart grids, such as smart meters, advanced communications and information management systems, demand side management and storage, cyber security, transmission and distribution, and electric energy storage technologies. The seminar will be followed by a luncheon reception.
- Business meetings with utilities, transmission and distribution networks, major energy and technology companies.
- Networking reception for business and government contacts.

Wednesday, October 17, 2012

- Site visits and business meetings.
- Networking business reception (TBC).

Participation Requirements

All parties interested in participating in the trade mission must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated, on a rolling basis, on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 15 and maximum of 25 companies will be selected to participate in the mission from the applicant pool.

Fees and Expenses

After a company or organization has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee for the Trade Mission will be *$1,202.00* for a small or medium-sized firm (SME),[1] and *$2,350.00* for large firms. The fee for each additional firm representative (large firm or SME/trade organization) is $600. Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Delegation members will be

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contracting opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see *http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

able to take advantage of U.S. Embassy rates for hotel rooms.

Conditions For Participation

Targeted mission participants are U.S. companies providing smart grid equipment, technology and services that have an interest in learning more about the UK and European markets. Target sectors holding high potential for U.S. exporters include: Smart meters and advanced metering infrastructure; communication and data management software and services; grid optimization technologies; demand response and control systems; cyber security software and services; transmission and distribution equipment; automation technologies; and consumer engagement platforms and services.

Selection Criteria for Participation

The following criteria will be evaluated in selecting participants:

- Relevance of the company's business to the mission goals;
- Market potential for business in the UK and European markets;
- Provision of adequate information on the company's products and/or services, and communication of the company's primary objectives; and
- Timeliness of the company's completed application and participation agreement signed by a company officer.

Diversity of company size and location may also be considered during the review process. Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Selection Timeline

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://export.gov/trademissions*) and other Internet Web sites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than August 17, 2012. The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis beginning in February, 2012. Applications received after August 17, 2012 will be considered only if space and scheduling constraints permit.

Contacts

Claudia Colombo (BSc Hons, MRes, Ph.D.), Energy Commercial Specialist, U.S. Department of Commerce, U.S. Embassy, 24 Grosvenor Square, London W1A 1AE, UK, Tel: +44 (0)20 7894 0443, Fax: +44 (0)20 7894 0020, Email: *claudia.colombo@trade.gov.*

Elnora Moye,

Trade Program Assistant.

[FR Doc. 2012–4840 Filed 2–28–12; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Pacific Islands Region Coral Reef Ecosystems Permit Form

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 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: Requests for additional information or copies of the information collection instrument and instructions should be directed to Walter Ikehara, (808) 944–2275 or *Walter.Ikehara@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection.

National Marine Fisheries Service (NMFS) requires, as codified under 50 CFR part 665, any person, (1) fishing for, taking, retaining, or using a vessel to fish for Western Pacific coral reef ecosystem management unit species in the designated low-use Marine Protected Areas; (2) fishing for any of these species using gear not specifically allowed in the regulations; or (3) fishing for, taking, or retaining any Potentially Harvested Coral Reef Taxa in the coral reef ecosystem regulatory area, to obtain and carry a permit. A receiving vessel must also have a transshipment permit for at-sea transshipment of coral reef ecosystem management unit species. The permit application form provides basic information about the permit applicant, vessel, fishing gear and method, target species, projected fishing effort, etc., for use by NMFS and the Western Pacific Fishery Management Council in determining eligibility for permit issuance. The information is important for understanding the nature of the fishery and provides a link to participants. It also aids in the enforcement of Fishery Ecosystem Plan measures.

II. Method of Collection

Information is submitted to NMFS, in the form of paper permit application forms.

III. Data

OMB Control Number: 0648–0463.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 12.

Estimated Time Per Response: 2 hours.

Estimated Total Annual Burden Hours: 30.

Estimated Total Annual Cost to Public: $100 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 24, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–4779 Filed 2–28–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Report of Whaling Operations

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 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: Requests for additional information or copies of the information collection instrument and instructions should be directed to Melissa Andersen (301) 427–8385 or *Melissa.Andersen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection.

Native Americans may conduct certain aboriginal subsistence whaling in accordance with the provisions of the International Whaling Commission (IWC). In order to respond to obligations under the International Convention for the Regulation of Whaling, and the IWC, captains participating in these operations must submit certain information to the relevant Native American whaling organization about strikes on and catch of whales. Anyone retrieving a dead whale is also required to report. Captains must place a distinctive permanent identification mark on any harpoon, lance, or explosive dart used, and must also provide information on the mark and self-identification information. The relevant Native American whaling organization receives the reports, compiles them, and submits the information to NOAA.

The information is used to monitor the hunt and to ensure that quotas are not exceeded. The information is also provided to the IWC, which uses it to monitor compliance with its requirements.

II. Method of Collection

Reports may be made by phone or fax. Information on equipment marks must be made in writing. No form is used.

III. Data

OMB Control Number: 0648–0311.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households; State, Local, or Tribal Governments.

Estimated Number of Respondents: 51.

Estimated Time Per Response: 30 minutes for reports on whales struck or on recovery of dead whales; 5 minutes for providing the relevant Native American whaling organization with information on the mark and self-identification information; 5 minutes for marking gear; and 5 hours for the relevant Native American whaling organization to consolidate and submit reports.

Estimated Total Annual Burden Hours: 45.

Estimated Total Annual Cost to Public: $100 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 24, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–4778 Filed 2–28–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB042

Marine Mammals; File No. 16325

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Jooke Robbins, Ph.D., Center for Coastal Studies (CCS), 5 Holway Avenue, Provincetown, MA 02657, has applied in due form for a permit to conduct research on humpback whales (*Megaptera novaeangliae*), fin whales (*Balaenoptera physalus*), blue whales (*B. musculus*), sei whales (*B. borealis*), minke whales (*B. acutorostrata*), sperm whales (*Physeter macrocephalus*), and killer whales (*Orcinus orca*).

DATES: Written, telefaxed, or email comments must be received on or before March 30, 2012.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 16325 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please

include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Joselyd Garcia-Reyes or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant requests a permit to conduct close vessel approaches; photo-identification and behavioral observations; photogrammetry; collection of exhaled air, feces and sloughed skin; and skin and blubber biopsy sampling import and export of parts; in order to continue a long-term study of North Atlantic humpback whales and to improve understanding of six other species in the North Atlantic (fin, blue, sei, minke, sperm and killer whales). Research would occur in the waters off Maine to Florida and Puerto Rico. The purposes of the research are to: (1) Monitor trends in abundance and vital rates, (2) study movement and habitat use patterns, including individual exchange with other populations, (3) study entanglement rates and human-related impacts, (4) perform genetic investigations into demography and reproductive success, (5) perform hormone-based studies into reproduction and neonatal mortality, and (6) perform stable isotope investigations into foraging ecology and nutritional stress in humpback whales. Research on the other species would focus primarily on population structure, human impacts, and health. Up to 2,100 humpback whales, 250 fin whales, 100 sei whales, and 50 whales from each of the remaining species could be harassed each year during photo-identification activities, and collection of sloughed skin, exhaled mucosa/gases, and/or feces. In addition, 340 humpback whales, 90 fin whales, 70 sei whales, and 30 whales from each of the remaining species could be harassed each year to acquire successful skin and blubber biopsy samples. North Atlantic right whales (*Eubalaena glacialis*) and 14 other non-listed marine mammals could be incidentally harassed. See the application for specific take numbers by location and species/stock. The permit would be valid for a period of five years.

A draft environmental assessment (EA) has been prepared in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), to examine whether significant environmental impacts could result from issuance of the proposed scientific research permit. The draft EA is available for review and comment simultaneous with the scientific research permit application.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 24, 2012.

Tammy Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–4833 Filed 2–28–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Deep Seabed Mining: Request for Extension of Exploration Licenses

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of receipt of application to extend Deep Seabed Mining Exploration Licenses USA–1 and USA–4; request for comments.

SUMMARY: Pursuant to the Deep Seabed Hard Mineral Resources Act (DSHMRA; 30 U.S.C. 1401–1473), the National Oceanic and Atmospheric Administration (NOAA) has received an application for five-year extensions of Deep Seabed Mining Exploration Licenses USA–1 and USA–4 that are held by the Lockheed Martin Corporation. As part of the application, NOAA also has received an amended exploration plan submitted by Lockheed, which sets forth the exploration activities to be conducted during the extended period of the license.

The USA–1 and USA–4 deep seabed mining licenses were previously issued to Ocean Minerals Company (OMCO), a partnership that included Lockheed. Upon the dissolution of OMCO, all interests in both licenses were conveyed to Lockheed.

Section 107(a) of DSHMRA provides that the initial term of an exploration license shall be for ten years. 30 U.S.C. 1417. This section further provides that if the licensee has substantially complied with the license and exploration plan and has requested an extension of the license, NOAA shall extend the license, for periods of not more than five years each, on terms, conditions and restrictions consistent with DSHMRA and its supporting regulations.

The terms of licenses USA–1 and USA–4 authorized exploration through 2004. In 2011, Lockheed requested an extension of USA–1 and USA–4. NOAA has determined that it is within the discretion of the agency to consider Lockheed Martin's request to extend these DSHMRA licenses, and that NOAA intends to consider this request under 15 CFR 970.515(b). NOAA notes that the investment and engagement in exploration activities by Lockheed predate the enactment of DSHMRA. Thus, NOAA recognizes that Lockheed qualifies as a pre-enactment explorer under the DSHMRA regulations at 15 CFR 970.101(q). Lockheed has not surrendered its licenses nor otherwise shown any intent to abandon them. The records for these licenses show that Lockheed indicated its intent to extend the licenses in several communications to NOAA. According to LM's application, Lockheed has not undertaken any at-sea exploration activities that would be in violation of the license terms, conditions and restrictions. NOAA finds that the public interest would not be served by requiring Lockheed to reapply for the exploration licenses.

As part of its extension request, Lockheed has submitted an amended exploration plan that discusses activities undertaken to date, together with those activities it would pursue during the next five years. Consistent with exploration plans previously submitted by OMCO in conjunction with earlier extension requests, the exploration proposed by Lockheed will continue to occur in two phases with Phase I being a preparatory stage followed by at-sea exploration during Phase II. Phase I consists of onshore study and analysis, including the selection of suitable survey systems, and the collection of economic, design and environmental data. Phase II would occur in the future, contingent upon changes in market conditions that would support the substantial investment in at-sea exploration, and on the ability of Lockheed Martin to obtain

adequate assurance of security of tenure at the international level. For a U.S. company, obtaining such adequate assurance of security of tenure would require that the United States become a Party to the 1982 Law of the Sea Convention, as modified by the 1994 Implementing Agreement. Under both licenses, further NOAA approval is required before Phase II at-sea activities may be undertaken.

NOAA is requesting comments pertaining to the request to extend USA–1 and USA–4 including but not limited to whether there has been substantial compliance with the licenses and exploration plans, and whether the revised exploration plans for USA–1 and USA–4 meet the terms, conditions and restrictions of DSHMRA and the licenses issued thereunder. With the exception of any information deemed to be subject to the confidentiality protections provided under 15 CFR 971.802, the request for extension and revised exploration plan are available through the contact for further information listed below.

DATES: Individuals and organizations intending to submit comments on the exploration license extension request should do so by April 15, 2012.

ADDRESSES: Comments should be submitted to Joelle Gore, Acting Chief, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910; email *Joelle.Gore@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Kerry Kehoe, Coastal Programs Division (NORM/3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910; email *Kerry.Kehoe@noaa.gov.* Federal Domestic Assistance Catalogue 11.419 Coastal Zone Management Program Administration.

Dated: February 17, 2012.

David M. Kennedy,

Assistant Administrator, National Ocean Service, National Oceanic Atmospheric Administration.

[FR Doc. 2012–4613 Filed 2–28–12; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA969

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Abalone Research on San Nicolas Island, California

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from Dr. Glenn R. VanBlaricom (VanBlaricom) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to abalone research surveys. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to VanBlaricom to take, by Level B Harassment only, three species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than March 30, 2012.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Laws@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

An electronic copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption

of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].''

Summary of Request

On October 26, 2011, NMFS received a complete application from VanBlaricom for the taking, by Level B harassment only, of marine mammals incidental to black abalone (*Haliotis cracherodii*) research surveys. The first of five IHAs for the specified activities was issued to VanBlaricom on September 23, 2003 (68 FR 57427; October 3, 2003); the most recent of these was issued on January 18, 2008 (73 FR 4841; January 28, 2008), expiring January 17, 2009. The proposed IHA would be valid for 1 year from the date of issuance.

The proposed IHA would authorize small numbers of Level B harassment takes of California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), and northern elephant seals (*Mirounga angustirostris*) incidental to research surveys performed for the purpose of assessing trends in black abalone populations over time in permanent study sites, and to conduct related research on the biology and ecology of black abalones relevant to current conservation concerns for the species, at San Nicolas Island (SNI), Ventura County, California. The specified activity consists of researchers, on foot, counting black abalones in plots along established transect lines at each of nine sites. Visits are generally made to each site on SNI up to four times per year in order to complete standardized annual black abalone surveys. In addition, VanBlaricom plans to conduct additional studies of growth and mortality rates, as well as genetic studies, necessitating as many as five visits per year.

Description of the Specified Activity

Long-term study of abalone population trends began in 1979 due to interest in relocation of southern sea otters (*Enhydra lutris nereis*) to SNI. Following two seasons of reconnaissance surveys (1979–80), quantitative survey effort started in 1981, when nine permanent research sites in rocky intertidal habitats were chosen based on the presence of relatively dense abalone aggregations in order to monitor changes over time. From September 1979 through October 2011, VanBlaricom has made 137 separate field trips to SNI, with a total of 723 days of survey work.

Study of abalone population trends on SNI began in advance of the reintroduction of sea otters to SNI by the U.S. Fish and Wildlife Service (USFWS), which operated the relocation program from 1987–91. Because abalones are often significant prey for sea otters, it was considered important to monitor abalone population trends in advance of and during the relocation program. In 1992, the appearance of a novel exotic disease at SNI (abalone withering syndrome) resulted in dramatically increased rates of abalone mortality and a continued emphasis on understanding population trends. In addition, the possibility for conflict over conservation priorities (i.e., otters and abalone) has grown as sea otter populations in southern California waters have expanded in recent years, increasing the probability of natural dispersal of sea otters from mainland California to SNI. The southern sea otter was listed as threatened under the Endangered Species Act (ESA) in 1977, although translocated populations, such as those animals moved to SNI under USFWS's now-discontinued program, are considered non-essential experimental populations. The black abalone was listed as an endangered species under the ESA on January 14, 2009. There is concern that the effects of abalone withering syndrome, following on several decades during which black abalones may have been over-harvested in commercial and recreational fisheries and subject to illegal removals, may continue to constrain black abalone populations to low densities and a high consequent risk of extinction. The long-term abalone population trend data from SNI will contribute significantly to determining whether population depletion persists, and if extinction risk remains high.

Marine mammal populations at SNI (especially California sea lions and elephant seals) have grown substantially, and with expanded distributions, at SNI since the beginning of abalone research in 1979. Thus, sites previously accessible to researchers with no risk of marine mammal interaction are now being utilized by marine mammals at levels such that approach without harassment is no longer possible. During the 2002 survey year, VanBlaricom determined that marine mammal numbers were such that survey work could not be conducted at five of the nine sites without the possibility of incidental harassment of hauled-out pinnipeds. Subsequently, significant numbers of California sea lions were seen for the first time at two additional study sites. Thus, of the nine study sites used for the abalone surveys, only two may currently be approached without the possibility of disturbing at least one species of pinniped.

Animals likely to be affected by abalone research activity are those that are hauled out on land near study sites. Past experience has shown that those animals disturbed by researchers may flush into the water, or move some distance away from the researchers without flushing into the water. Variable numbers of California sea lions, harbor seals, and elephant seals typically haul out near six of the nine study sites, and rarely near a seventh. Breeding activity of the three relatively common pinniped species occurs at five of the nine sites. Periods of breeding and lactation for California sea lions and harbor seals occur from approximately February 15 through October 15, while elephant seal pups are born, nursed, and weaned from approximately January through March, with pups departing for foraging areas at sea at about 30 days post-weaning.

Abalone research at SNI is conducted primarily by VanBlaricom and associates from the Washington Cooperative Fish and Wildlife Research Unit (a component of the Cooperative Research Units Program, U.S. Geological Survey) and the University of Washington. The U.S. Navy owns SNI and provides logistical support and cooperation for all research work done there, with additional logistical support provided by the University of California, Santa Cruz. Funding for black abalone research work at SNI is currently provided by the U.S. Geological Survey; the National Marine Fisheries Service; the California Sea Grant College Program; the University of Washington; and the U.S. Navy.

Research is conducted by counting black abalone in plots of 1 m^2 (3.3 ft^2) along permanent transect lines in rocky intertidal habitats at each of the nine study sites (see Figure 1 of VanBlaricom's application for a map of the study sites). Permanent transect lines are demarcated by stainless steel eye-bolts embedded in the rock substrate and secured with marine epoxy compound. Lines are placed temporarily between bolts during surveys and are removed once surveys are completed. Survey work is typically done by two field biologists working on foot (sites are accessed by hiking to the shoreline from a vehicle parked inland), and is conducted only at low tide. Variation in surf height and sea conditions can influence the safety of field biologists as well as the quality of data collected, so specific timing of site visits is difficult to predict, although

work is typically conducted between October and February. All work is done during daylight hours. Additional methodological detail is available in VanBlaricom, 1993 and VanBlaricom *et al.,* 1993.

In recent years, teams responsible for status review and recovery planning for black abalone determined that there is a need for additional research. Identified priorities include study of growth and mortality rates of young black abalones (accomplished through tagging studies) and development of new research on the genetic relatedness of adult abalones and recently observed juvenile abalones at three of the nine study sites at SNI. VanBlaricom is currently developing detailed study plans for subject genetic studies, and is collaborating with NMFS scientists on tagging studies to understand growth and mortality rates. These additional studies require field effort beyond that necessary for the established population surveys. Annual black abalone surveys typically require that each of the nine permanent sites be visited between one and three times per year. As a result of the additional studies planned for SNI, one site would be visited five times per year, and two additional sites would be visited four times. Each visit to a given study site generally takes no more than 4 hours, after which the site is vacated and can be re-occupied by any marine mammals that were disturbed by the presence of researchers. One annual visit to each site is typically for maintenance purposes, is conducted in a month when pinnipeds are absent or are present in reduced numbers, and takes approximately 30 minutes.

Region of Activity

SNI, approximately nine miles (14.5 km) long and four miles (6.4 km) wide, lies in the Santa Barbara Channel, more than 60 mi (96.6 km) offshore. One of the smallest of the eight Channel Islands, SNI is the farthest island from the mainland, and is typically reached only after a 7–8 hour ride via chartered vessel. The island has a relatively flat plateau on the interior, with a very steep cliff face dropping to the ocean on the south side and a more gradual slope on the north. Elevations of the southern cliff faces average 500 ft (152 m) with a maximum island elevation of 907 ft (276 m). The beaches are mainly loose sand with large semi-transient sand dunes on the western tip of the island. A large low sand spit extends out from the eastern beach. The interior of the island is a highly eroded rolling mesa with many rills and gullies. Swells, surge, and limited visibility are expected as general conditions at SNI, which is property of the U.S. Navy and is off-limits to civilians without specific permission.

Description of Marine Mammals in the Area of the Specified Activity

Many of the beaches in the Channel Islands provide resting, molting or breeding places for pinnipeds. On SNI, three pinniped species (northern elephant seal, harbor seal, and California sea lion) can be expected to occur on land in the vicinity of abalone research sites either regularly or in large numbers during certain times of the year. In addition to the three species commonly encountered at SNI, Guadalupe fur seals (*Arctocephalus townsendi*), listed as threatened under the ESA, and sea otters are known to occur. A single adult male Guadalupe fur seal was seen at one abalone research site on two occasions during the summer months in the mid-1980s. However, none have been seen since that time. Due to the rarity of Guadalupe fur seal sightings during abalone research at SNI, and because of mitigation measures described later in this document (see Proposed Mitigation section of this document), no take of Guadalupe fur seals is anticipated or proposed for authorization. As such, the species is not discussed further. While sea otters are not typically sighted during the abalone survey work, a 2011 population survey indicated that sea otters at SNI number approximately 50 individuals. However, sea otters are under the jurisdiction of the USFWS and are not discussed further here.

Further information on the biology and distribution of these species and others in the region can be found in NMFS' Marine Mammal Stock Assessment Reports, which are available online at *http://www.nmfs.noaa.gov/pr/sars/.California Sea Lion.*

Species Description—California sea lions are members of the Otariid family (eared seals). The species, *Zalophus californianus,* includes three subspecies: *Z. c. wollebaeki* (in the Galapagos Islands), *Z. c. japonicus* (in Japan, but now thought to be extinct), and *Z. c. californianus* (found from southern Mexico to southwestern Canada; referred to here as the California sea lion) (Carretta *et al.,* 2007). The California sea lion is sexually dimorphic. Males may reach 1,000 lb (454 kg) and 8 ft (2.4 m) in length; females grow to 300 lb (136 kg) and 6 ft (1.8 m) in length. Their color ranges from chocolate brown in males to a lighter, golden brown in females. At around 5 years of age, males develop a bony bump on top of the skull called a sagittal crest. The crest is visible in the dog-like profile of male sea lion heads, and hair around the crest gets lighter with age.

Status—The U.S. stock of California sea lions is estimated at 238,000, with a minimum population size of 141,842 individuals (Carretta *et al.,* 2007). The minimum population size was determined from counts of all age and sex classes that were ashore at major rookeries and haul-out sites during the 2005 breeding season, including all individuals counted during the July 2005 census at the Channel Islands in southern California and at haul-out sites located between Point Conception and the Oregon-California border. An additional unknown number of California sea lions at any given time are at sea or hauled out at locations that are not censused; in order to estimate a total population size, pups are counted during the breeding season (because this is the only age class that is ashore in its entirety), and the number of births is estimated from the pup count. The size of the population is then estimated from the number of births and the proportion of pups in the population (Carretta *et al.,* 2007). The stock has likely reached its carrying capacity and, even though current total human-caused mortality is unknown (due to a lack of observer coverage in the California set gillnet fishery that historically has been the largest source of human-caused mortalities), California sea lions are not considered a strategic stock under the MMPA because total human-caused mortality is still likely to be less than the potential biological removal (PBR).

Distribution—The geographic distribution of California sea lions includes a breeding range from Baja California, Mexico to southern California. During the summer, California sea lions breed on islands from the Gulf of California to the Channel Islands and seldom travel more than about 50 km from the islands (Bonnell *et al.,* 1983). Primary rookeries are located on SNI and three other California Channel Islands (San Miguel, Santa Barbara, and San Clemente) (Le Boeuf and Bonnell, 1980; Bonnell and Dailey, 1993). Their distribution shifts to the northwest in fall and to the southeast during winter and spring, probably in response to changes in prey availability (Bonnell and Ford, 1987).

The non-breeding distribution extends from Baja California north to Alaska for males, and encompasses the waters of California and Baja California for females (Reeves *et al.,* 2008; Maniscalco *et al.,* 2004). In the non-breeding season, an estimated 3,000 to 5,000 adult and sub-adult males migrate northward along the coast to central and

northern California, Oregon, Washington, and Vancouver Island from September to May (Jeffries *et al.,* 2000) and return south the following spring (Mate, 1975; Bonnell *et al.,* 1983). Along their migration, they are occasionally sighted hundreds of miles offshore (Jefferson *et al.,* 1993). Females and juveniles tend to stay closer to the rookeries (Bonnell *et al.,* 1983).

California sea lions haul out at many locations on SNI and are by far the most common pinniped on the island, and are present in large numbers at SNI at all times of the year. Over the course of a year, up to 100,000 California sea lions may make use of habitat at SNI in some way. Numbers of sea lions at SNI increased by about 21 percent per year between 1983 and 1995 (NMFS, 2003) and, as numbers increased, began occupying areas that were not formerly used. As for sea lions in other locations, most adult males may disperse in autumn and winter to distant locations, primarily to the north, in order to forage.

Behavior and Ecology—California sea lions feed on a wide variety of prey, including many species of fish and squid (Everitt *et al.,* 1981; Roffe and Mate, 1984; Antonelis *et al.,* 1990; Lowry *et al.,* 1991). In some locations where salmon runs exist, California sea lions also feed on returning adult and out-migrating juvenile salmonids (London, 2006). Sexual maturity occurs at around 4–5 years of age for California sea lions (Heath, 2002). California sea lions are gregarious during the breeding season and social on land during other times.

Pupping occurs on the beaches of SNI in early summer, from mid-June to mid-July. Females nurse their pups for about 8 days and then begin an alternating pattern of foraging at sea and attending and nursing the pup on land, which lasts for about 8 months, and sometimes up to a year. Time to weaning is variable and may extend to the following breeding season. The weaning process may be gradual, with pups learning to hunt and consume live prey while still nursing. Pups more than a few months of age are similar to adults in mobility, agility, and alertness to disturbances when hauled out. California sea lions also haul out at SNI during the molting period in September, and smaller numbers of females and juveniles haul out during most of the year.

On land, California sea lions make incessant, raucous barking sounds (Schusterman *et al.,* 1967). Males vary both the number and rhythm of their barks depending on the social context; the barks appear to control the movements and other behavior patterns of nearby conspecifics (Schusterman, 1977). Females produce barks, squeals, belches, and growls, while pups make bleating sounds. California sea lions produce two types of underwater sounds: clicks (or short-duration sound pulses) and barks (Schusterman *et al.,* 1966, 1967; Schusterman and Baillet, 1969).

Harbor Seal

Species Description—Harbor seals, which are members of the Phocid family (true seals), inhabit coastal and estuarine waters and shoreline areas from Baja California, Mexico to western Alaska. For management purposes, differences in mean pupping date (i.e., birthing) (Temte, 1986), movement patterns (Jeffries, 1985; Brown, 1988), pollutant loads (Calambokidis *et al.,* 1985) and fishery interactions have led to the recognition of three separate harbor seal stocks along the west coast of the continental U.S. (Boveng, 1988). The three distinct stocks are: (1) inland waters of Washington (including Hood Canal, Puget Sound, and the Strait of Juan de Fuca out to Cape Flattery), (2) outer coast of Oregon and Washington, and (3) California (Carretta *et al.,* 2007). The California stock is the only stock that is expected to occur within the project area.

The average weight for adult seals is about 180 lb (82 kg) and males are slightly larger than females. Male harbor seals weigh up to 245 lb (111 kg) and measure approximately 5 ft (1.5 m) in length. The basic color of harbor seals' coat is gray and mottled but highly variable, from dark with light color rings or spots to light with dark markings (NMFS, 2008c).

Status—Estimated population for the California stock of harbor seals is approximately 34,233 (Carretta *et al.,* 2007), with a minimum population of 31,600. As for the California sea lion, a complete count of all harbor seals in California is impossible because some are always away from the haul-out sites. However, a complete pup count is also not possible because harbor seals are precocious, with pups entering the water almost immediately after birth. Population size is estimated by counting the number of seals ashore during the peak haul-out period (May to July) and by multiplying this count by the inverse of the estimated fraction of seals on land. The current population estimate is based on counts from 2004.

Counts of harbor seals in California showed a rapid increase from approximately 1972 to 1990, though net production rates appeared to decline from 1982 to 1994. The decrease in population growth rate has occurred at the same time as a decrease in human-caused mortality and may be an indication that the population is reaching its environmental carrying capacity. Harbor seals are not listed under the ESA or considered to be depleted under the MMPA. Human-caused mortality relative to PBR is unknown, but it is considered to be small relative to the stock size. Therefore, the California stock of harbor seals is not classified as a strategic stock.

Harbor seal abundance increased at SNI from the 1960s until 1981, but since then the average counts have not changed significantly. From 1982 to 1994, numbers of harbor seals have fluctuated between 139 and 700 harbor seals based on both peak ground counts and annual photographic survey photos. The most recent aerial count on SNI was of 457 harbor seals in 1994.

Distribution—Harbor seals are widely distributed in the North Atlantic and North Pacific. The California stock ranges from the U.S.-Mexico border northward to the Oregon-California border. In California, approximately 400–600 harbor seal haul-out sites are distributed along the mainland and on offshore islands, including intertidal sandbars, rocky shores and beaches (Hanan, 1996; Lowry *et al.,* 2005). In general, harbor seals do not undertake long migrations, but do travel 300–500 km on occasion to find food or suitable breeding areas (Herder, 1986). Harbor seals are rarely found in pelagic waters (usually found within 20 km from shore) and typically stay within the tidal and intertidal zones. Harbor seals are present at SNI during all months of the year.

Behavior and Ecology—On land, harbor seals haul out on rocky outcrops, mudflats, sandbars and sandy beaches with unrestricted access to water and with minimal human presence. Haul-out sites are important as resting sites for harbor seals, who feed opportunistically in shallow waters on fish, crustaceans, and cephalopods (Bigg, 1981; Roffe and Mate, 1984; Orr *et al.,* 2004). Harbor seals are typically solitary while foraging, although small groups have been observed. They normally choose isolated sites for pupping. While ashore, harbor seals are typically seen in small groups resting. Harbor seals are opportunistic feeders that adjust their patterns to take advantage of locally and seasonally abundant prey (Payne and Selzer 1989; Baird 2001; Bjørge 2002). Harbor seals mate at sea and females give birth during the spring and summer, although the pupping season varies by latitude. Suckling harbor seal pups spend as

much as 40 percent of their time in the water (Bowen *et al.,* 1999).

Harbor seals haul out at various sand, cobble, and gravel beaches around SNI, where pupping occurs from late February to early April, with nursing of pups extending into May. Pups are fully weaned and independent approximately 2 months after birth. Harbor seals may also haul out during molting period in late spring, and smaller numbers haul out at other times of year.

In air, harbor seal males produce a variety of vocalizations, including snorts, grunts, and growls, while pups make individually unique calls for mother recognition (Bigg, 1981; Thomson and Richardson, 1995). Harbor seals hear nearly as well in air as underwater (Kastak and Schusterman, 1998). Adult males also produce underwater sounds during the breeding season (duration range: 0.1 s to multiple seconds; Hanggi and Schusterman 1994). Hanggi and Schusterman (1994) found that there is individual variation in the dominant frequency range of sounds between different males, and Van Parijs *et al.* (2003) reported oceanic, regional, population, and site-specific variation that could be vocal dialects.

Northern Elephant Seal

Species Description—Northern elephant seals, found in the eastern Pacific Ocean, are the largest phocid in the Northern Hemisphere. Feeding grounds extend from Baja California to Vancouver Island. Males migrate as far north as Alaska and British Columbia, while females (who typically find feeding grounds further south than males) migrate as far west as Hawaii. Fully grown males can reach lengths of over 13 ft (4 m) and can weigh nearly 4,400 lb (2,000 kg). Females are significantly smaller than males, but are also quite large, growing to about 10 ft (3 m) long and weighing up to 1,300 lbs (600 kg).

Status—Populations of northern elephant seals in the U.S. and Mexico derive from tens to hundreds of individuals surviving in Mexico after being nearly hunted to extinction (Stewart et al., 1994). The California breeding population, which includes the animals that may be found at SNI, is now demographically isolated from the Baja California population, and is considered to be a separate stock, though displaying little genetic differentiation. Based on trends in pup counts, northern elephant seal colonies appeared to be increasing in California through 2005, but appear to be stable or slowly decreasing in Mexico (Stewart *et al.,* 1994). As for other pinnipeds, a complete population count of elephant seals is not possible because all age classes are not ashore at the same time. Elephant seal population size is typically estimated on the basis of pup counts; the current population estimate is made on the basis of counts from 2005. The California breeding stock is estimated at approximately 124,000 animals, with a conservative minimum population estimate of 74,913 animals. From 1965–77, the maximum population growth rate was determined to be 8.3 percent (Cooper and Stewart, 1983), but more recently has been evaluated at a maximum of 11.7 percent (Carretta *et al.,* 2007). The northern elephant seal is not listed under the ESA and the California stock is not considered depleted or strategic under the MMPA.

Distribution—The California stock of northern elephant seals ranges from the U.S.-Mexico border northward to pelagic habitats off Alaska, with two annual round-trip migrations per year between breeding locations and foraging locations. Foraging locations are in the pelagic North Pacific and Gulf of Alaska off Oregon, Washington, British Columbia, and Alaska, although female foraging ranges are further south (Stewart and Huber, 1993; Le Boeuf *et al.,* 1993). The migration schedule varies by age and sex category. Although the pelagic range is very large, there are only about seven principal breeding areas, four of which are found in the U.S. Primary breeding locations for the California stock are at San Miguel Island and SNI in the Channel Islands off southern California, Año Nuevo Island off central California, and Point Piedras Blancas on the central California mainland coast.

Increasing numbers of elephant seals haul out at various sites around SNI. Based on a pup count in 1995 that found 6,575 pups, scientists estimated that over 23,000 elephant seals may use SNI in a year (NMFS, 2003). From 1988 to 1995 the pup counts on SNI increased at an average rate of 15.4 percent per year, however, the growth rate of the population as a whole seems to have declined in recent years (NMFS, 2003).

Behavior and Ecology—Northern elephant seals breed and give birth in California from December to March (Stewart *et al.,* 1994; Stewart and Huber, 1993), before departing for foraging grounds. Gestation lasts around eleven months, with pups born in early winter from December to January and fully weaned by the end of February, departing from SNI for their first foraging trip during late winter and early spring. Adults return to land between March and August to molt, with males returning later than females. Adults return to their feeding areas again between their spring/summer molting and their winter breeding seasons. Northern elephant seals are polygamous; males establish dominance over large groups of females during the breeding season. While foraging, elephant seals feed at night in deep water, primarily on fish and cephalopods (CDFG, 2009). Elephant seals are rarely observed at sea, because they forage in pelagic habitat and are submerged 80–90 percent of the time.

Northern elephant seals are present at SNI during all months of the year. Adult males arrive at SNI in late fall to establish breeding territories. Adult females arrive on SNI in early winter. Sub-adult animals also return to SNI during the breeding season, although they do not actively participate in breeding. Breeding adults of both sexes depart breeding sites for foraging purposes in March. The timing of the second migration, related to molting, varies by age and sex. At SNI, adult males return for molting beginning in June and depart back to foraging areas in August. Adult females and juveniles return for the molt period beginning in mid-March and depart back to foraging areas in May. Finally, juveniles ranging in age from young-of-the-year to 4 years return for an extended haul-out period from September through November. This latter haul-out period is not associated either with breeding or molting.

Potential Effects of the Specified Activity on Marine Mammals

Variable numbers of California sea lions, harbor seals, and elephant seals, depending on the time of year and the specific site, typically haul out near six of the nine study sites used for abalone research, and rarely near a seventh, with breeding activity occurring at five of the nine sites. Pinnipeds likely to be affected by abalone research activity are those that are hauled out on land at or near study sites.

Incidental harassment may result if hauled out animals are disturbed by the presence of abalone researchers. Although marine mammals are never deliberately approached by abalone survey personnel, approach may be unavoidable if pinnipeds are hauled out in the immediate vicinity of the permanent abalone study plots. Disturbance may result in reactions ranging from an animal simply becoming alert to the presence of researchers (e.g., turning the head, assuming a more upright posture) to flushing from the haul-out site into the water. NMFS does not consider the lesser reactions to constitute behavioral

harassment, or Level B harassment takes, but rather assumes that pinnipeds that move greater than 1 m (3.3 ft) or change the speed or direction of their movement in response to the presence of researchers are behaviorally harassed, and thus subject to Level B taking. Animals that respond to the presence of researchers by becoming alert, but do not move or change the nature of locomotion as described, are not considered to have been subject to behavioral harassment.

Typically, even those reactions constituting Level B harassment would result at most in temporary, short-term disturbance. In any given study season (i.e., October to March), the researchers will make 4–6 visits to SNI, although each site is not visited during every visit to SNI. Visits to each site are thus separated by a matter of weeks, within the season, and are typically not visited at all during the summer months. Each site visit typically lasts no more than 4 hours. Therefore, disturbance of pinnipeds resulting from the presence of researchers lasts only for short periods of time and is separated by significant amounts of time in which no disturbance occurs. Because such disturbance is sporadic, rather than chronic, and of low intensity, individual marine mammals are unlikely to incur any detrimental impacts to vital rates or ability to forage and, thus, loss of fitness. Correspondingly, even local populations, much less the overall stocks of animals, are extremely unlikely to accrue any significantly detrimental impacts.

There are three ways in which disturbance, as described previously, could result in more than Level B harassment of marine mammals. All three are most likely to be consequences of stampeding, a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus and an occurrence that is not expected at SNI. The three situations are (1) falling when entering the water at high-relief locations; (2) extended separation of mothers and pups; and (3) crushing of elephant seal pups by large males during a stampede.

Because hauled-out animals may move towards the water when disturbed, there is the risk of injury if animals stampede towards shorelines with precipitous relief (e.g., cliffs). However, while cliffs do exist at SNI, shoreline habitats near the abalone study sites are gently sloping sandy beaches or horizontal sandstone platforms with unimpeded and non-hazardous access to the water. If disturbed, hauled-out animals in these situations may move toward the water without risk of encountering significant hazards. In these circumstances, the risk of injury, serious injury, or death to hauled-out animals is very low. Thus, abalone research activity poses no risk that disturbed animals may fall and be injured or killed as a result of disturbance at high-relief locations.

The risk of marine mammal injury, serious injury, or mortality associated with abalone research increases somewhat if disturbances occur during breeding season. These situations present increased potential for mothers and dependent pups to become separated and, if separated pairs do not quickly reunite, the risk of mortality to pups (through starvation) may increase. Separately, adult male elephant seals may trample elephant seal pups if disturbed, which could potentially result in the injury, serious injury, or mortality of the pups. The risk of either of these situations is greater in the event of a stampede.

However, because under the terms of this proposed IHA researchers would not visit SNI during the breeding, pupping, and lactation periods for California sea lions and harbor seals, the former scenario is extremely unlikely. The most sensitive months (with regard to breeding and pupping) for California sea lions and harbor seals are generally May through August; VanBlaricom does not propose to visit SNI outside of October-February. Relevant to the latter scenario, the most sensitive months for northern elephant seals are generally December through March. However, though elephant seal pups are occasionally present when researchers visit abalone survey sites, risk of pup mortalities is very low because elephant seals are far less reactive to researcher presence than the other two species. Less than 1 percent of adult elephant seals present during research visits between December 2005–January 2009 were recorded as having been harassed, while, no juvenile elephant seals were recorded as having been harassed (i.e., becoming alert and moving at least one meter, including flushing into the water). Further, pups are typically found on sand beaches, while study sites are located in the rocky intertidal zone, meaning that there is typically a buffer between researchers and pups. Finally, the caution used by researchers in approaching sites generally precludes the possibility of behavior, such as stampeding, that could result in extended separation of mothers and dependent pups or trampling of elephant seal pups.

In summary, NMFS believes it highly unlikely that the proposed activities would result in the injury, serious injury, or mortality of pinnipeds (and none have been recorded in the more than 30 years that VanBlaricom has been conducting this research), because (1) study sites are located in areas with gently sloping terrain; (2) the timing of research visits would preclude separation of mothers and pups for sea lions and harbor seals; and (3) elephant seals are generally not susceptible to disturbance as a result of researchers' presence. In addition, researchers exercise appropriate caution approaching sites, especially when elephant seal pups are present.

Anticipated Effects on Habitat

NMFS does not anticipate any detrimental effects to marine mammal habitat as a result of the proposed activities, beyond rendering the areas immediately around each of the nine study sites less desirable as haul-out sites for a matter of hours per year.

Summary of Previous Monitoring

VanBlaricom has complied with the mitigation and monitoring required under previous authorizations. During the course of these activities, VanBlaricom has not exceeded the take levels authorized. Beginning with the first IHA issued to VanBlaricom, reporting included the numbers of animals of a given species present and the total number of those animals disturbed. Beginning in December 2005, disturbance reactions were further categorized into the number of animals that flush into the water; the number that move more than 1 m (3.3 ft), but do not flush into the water; and the number that increase alertness but do not move greater than 1 m (see the application for these numbers in detail). As discussed previously in this document, the latter category—animals that become alert but do not move—are not considered by NMFS as having been incidentally taken (i.e., subject to Level B harassment), pursuant to the MMPA. For the purposes of estimating take, NMFS considers the total of the two former categories of disturbance reactions only. The results of VanBlaricom's monitoring under previous IHAs are summarized in Table 1, which shows the mean and maximum numbers of each species present during visits to VanBlaricom's survey sites. Information is only presented for those research visits that occurred during months of October through February, as no visits are currently proposed outside those months.

TABLE 1—RESULTS OF PINNIPED MONITORING, OCTOBER 2003–JANUARY 2009

Site	# visits	California sea lion		Harbor seal		Elephant seal	
		Animals (mean)	Animals (max)	Animals (mean)	Animals (max)	Animals (mean)	Animals (max)
1	11	54	88	0	0	2	6
2	18	0	0	0	0	0	0
3	23	0	0	0	0	0	0
4	11	11	116	0	0	0	0
5	9	60	118	24	36	53	88
6	8	224	401	26	53	195	291
7	9	357	610	5	10	60	131
8	14	183	390	0	0	7	14
9	12	1	11	0	0	6	19

Numbers are presented as mean per visit and maximum observed in any visit, October–February.

Beginning in January 2007, VanBlaricom began recording numbers of adults and pups/juveniles, rather than simply numbers of total animals. Table 2 displays the proportion of juveniles found at each permanent study site from October–February. No juvenile harbor seals have been observed by the researchers. During those months, no marine mammals of any species have been observed at sites 2 and 3, and only non-breeding animals (i.e., adult and subadult males; no dependent juveniles) have been observed at sites 4 and 9.

TABLE 2—PROPORTION OF JUVENILES OBSERVED AT EACH SITE, JANUARY 2007–JANUARY 2009.

Site	1	2	3	4	5	6	7	8	9
California sea lion	0.12	n/a	n/a	0.0	0.07	0.11	0.17	0.02	0.0
Elephant seal	0.0	n/a	n/a	n/a	0.26	0.20	0.60	0.27	0.0

Data presented for October–February only. No juvenile harbor seals observed. No marine mammals observed at sites 2 and 3; no elephant seals observed at site 4. Only non-breeding animals observed at sites 4 and 9.

As shown in Table 3, the three species that may be encountered responded to researcher presence with different degrees of sensitivity. For California sea lions, 55 percent of animals encountered showed reactions indicating behavioral harassment, while 73 percent of harbor seals were behaviorally harassed. In contrast, less than 1 percent of elephant seals encountered responded in ways indicating behavioral harassment. Similarly, the three species differed in the degree of intensity of their reactions to researcher presence. Of animals that responded to disturbance in a manner that NMFS considers to be harassment (i.e., either flushed into the water or moved greater than 1 m), only 9 percent of disturbed elephant seals flushed into the water, while 38 percent of disturbed California sea lions responded in such a fashion. The most sensitive species is the harbor seal, with 94 percent of harassed animals flushing into the water. The remainder of animals harassed (i.e., 6 percent of harassed harbor seals) responded to a lesser degree by moving some distance (greater than 1 m) on land when the researchers approached. Importantly, juveniles display a significantly lesser incidence of overall harassment and of flushing.

Although the researchers have typically not remained on-site to monitor pinniped return after flushing, as rapid departure minimizes harassment of the animals, increasing numbers at certain sites as well as pinniped presence at sites where they were not present in past years suggest that the disturbance is not having any long-term detrimental effects on the population of any of these three species.

TABLE 2—SENSITIVITY OF ANIMALS TO ENCOUNTERS WITH RESEARCHERS AND INTENSITY OF REACTION, BY SPECIES

Species	% taken [1]			% flush [2]		
	Total	Adult	Juvenile	Total	Adult	Juvenile
California sea lion	54.8	56.4	30.8	38.3	40.8	4.5
Harbor seal [3]	73.2	73.2	n/a	94.0	94.0	n/a
Elephant seal [4]	0.6	0.9	0.0	9.1	9.1	n/a

Totals reflect information collected December 2005–January 2009; adult-juvenile breakdown from January 2007–January 2009.
[1] Percent taken is the percentage of animals encountered that either flushed into the water or moved greater than 1 m.
[2] Percent flush is the percentage of animals taken that flushed into the water.
[3] No juvenile harbor seals were encountered.
[4] No juvenile elephant seals were reported as taken.

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for

certain subsistence uses (where relevant).

Several mitigation measures are proposed to be implemented as part of the SNI abalone research activities in order to reduce the potential for harassment. The primary method of mitigating the risk of disturbance to pinnipeds, which will be in use at all times, is the selection of judicious routes of approach to abalone study sites, avoiding close contact with pinnipeds hauled out on shore, and the use of extreme caution upon approach. In no case will marine mammals be deliberately approached by abalone survey personnel, and in all cases every possible measure will be taken to select a pathway of approach to study sites that minimizes the number of marine mammals potentially harassed. Each visit to a given study site will last for approximately 4 hours, after which the site is vacated and can be re-occupied by any marine mammals that may have been disturbed by the presence of abalone researchers.

In addition, potential disturbances to females with dependent pups (in the cases of California sea lions and harbor seals) will be mitigated to the greatest extent practicable by avoiding visits to sites with pinnipeds present from March-September, during periods of breeding and lactation for those species. During this period, abalone research would either not occur or would be confined to those sites (2, 3, 4, and 9) where pinniped breeding and post-partum nursing does not occur. Limiting visits to the breeding and lactation sites to periods when these activities do not occur (October-February) will reduce the possibility of incidental harassment and disruption of reproductive behavior and the potential for injury, serious injury, or mortality of dependent California sea lion pups and harbor seal pups to near zero.

Northern elephant seal pups are present at four sites (5–8) during winter months. Risks of injury or mortality of elephant seal pups by mother/pup separation or trampling are limited to the period from January through March when pups are born, nursed, and weaned, ending about 30 days post-weaning when pups depart land for foraging areas at sea. However, elephant seals have a much higher tolerance of nearby human activity than sea lions or harbor seals. Also, elephant seal pupping typically occurs on the sandy beaches at SNI, approximately 50 m (164 ft) or more away from the abalone study sites. Possible take of northern elephant seal pups will be minimized, as for other species, by using a very careful approach to the study sites and avoiding the proximity of hauled-out seals and any seal pups during collection of abalone population data. As described previously, elephant seals show very low sensitivity to the presence of researchers, and no juvenile elephant seal was harassed during the December 2005–January 2009 period.

One individual Guadalupe fur seal was seen on two separate occasions during the summer months in the mid-1980s. Since the original sightings, no individuals of this species have been seen during abalone research. However, to ensure that Guadalupe fur seals are not affected by these activities, work will be immediately suspended if an individual is seen. Guadalupe fur seals are distinctive in appearance and behavior, and can be readily identified at a distance without any possibility of disturbance.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that would result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Currently, all biological research activities at SNI are subject to approval and regulation by the Environmental Planning and Management Department (EPMD), U.S. Navy (Navy). The Navy owns SNI and closely regulates all civilian access to, and activity on, the island, including biological research. Therefore, monitoring activities will be closely coordinated with Navy marine mammal biologists located on SNI.

In addition, status and trends of pinniped aggregations at SNI are monitored by the NMFS Southwest Fisheries Science Center (SWFSC). Also, long-term studies of pinniped population dynamics, migratory and foraging behavior, and foraging ecology at SNI are conducted by staff at Hubbs-Sea World Research Institute (HSWRI).

Proposed monitoring requirements in relation to VanBlaricom's abalone research surveys will include observations made by the applicant and his associates. Information recorded will include species counts (with numbers of pups/juveniles), numbers of observed disturbances, and descriptions of the disturbance behaviors during the abalone surveys. Observations of unusual behaviors, numbers, or distributions of pinnipeds on SNI will be reported to EPMD, NMFS, and HSWRI so that any potential follow-up observations can be conducted by the appropriate personnel. In addition, observations of tag-bearing pinniped carcasses as well as any rare or unusual species of marine mammals will be reported to EPMD and NMFS.

If at any time serious injury or mortality of the species for which take is authorized should occur, or if harassment of any other marine mammal occurs, and such action may be a result of the proposed abalone research, VanBlaricom will suspend research activities and contact NMFS immediately to determine how best to proceed to ensure that another injury or death does not occur and to ensure that the applicant remains in compliance with the MMPA.

A draft final report must be submitted to NMFS Office of Protected Resources within 60 days after the conclusion of the year-long field season or 60 days prior to the start of the next field season if a new IHA will be requested. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA. A final report must be submitted to the Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no

comments are received from NMFS, the draft final report will be considered to be the final report.

Estimated Take by Incidental Harassment

With respect to the activities described here, the MMPA defines ''harassment'' as:

> Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

All anticipated takes would be by Level B harassment, involving temporary changes in behavior. The proposed mitigation and monitoring measures are expected to minimize the possibility of injurious or lethal takes such that take by injury, serious injury, or mortality is considered remote. The distribution of pinnipeds hauled out on beaches is not uniform between sites or at different times of the year. The number of marine mammals disturbed may vary by month and location, and, compared to animals hauled out on the beach farther away from survey activity, only those animals hauled out closest to the actual survey transect plots contained within each research site are likely to be disturbed by the presence of researchers and alter their behavior or attempt to move out of the way. VanBlaricom proposes to visit site 8 five times, sites 5 and 7 four times each, and sites 1, 4, 6, and 9 two times each. No marine mammals have been observed at sites 2 and 3, and unlimited visits would be allowed to those sites.

As discussed earlier, NMFS considers an animal to have been harassed if it moved greater than 1 m (3.3 ft) in response to the researcher's presence or if the animal was already moving and changed direction and/or speed, or if the animal flushed into the water. Animals that became alert without such movements were not considered harassed. Estimated potential incidental take, shown in Table 4, is based on the number of visits proposed for each site, the maximum number of animals observed at each site (October-February) as shown in Table 1, and the observed susceptibility to harassment for each species as shown in Table 3. NMFS conservatively estimates that the maximum total possible numbers of individuals that may be incidentally harassed as a result of the proposed activity would be 3,340 California sea lions, 212 harbor seals, and nine northern elephant seals.

Negligible Impact and Small Numbers Analysis and Preliminary Determination

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the take occurs.

Based on VanBlaricom's application and monitoring reports for previous field seasons, as well as the analysis contained herein, NMFS has preliminarily determined that the impact of the described abalone research at SNI will result, at most, in a temporary modification in behavior by small numbers of California sea lions, harbor seals, and northern elephant seals, in the form of movement away from the researchers and/or flushing from the beach. The proposed numbers of authorized take for each of the three species are considered small relative to the relevant stocks or populations (each less than 2 percent). In addition, no take by injury, serious injury or mortality is anticipated, and take by harassment will be at the lowest level practicable due to incorporation of the mitigation and monitoring measures mentioned previously in this document. NMFS has preliminarily determined that the anticipated takes will have a negligible impact on the affected species.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

No subsistence uses of marine mammals are implicated by this action.

Endangered Species Act (ESA)

For the reasons described previously in this document, NMFS has determined that the described abalone research and the accompanying IHA will have no effect on marine mammal species or critical habitat protected under the ESA (specifically, the Guadalupe fur seal). Therefore, marine mammals under NMFS jurisdiction would not be affected by this action.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from issuance of an IHA to VanBlaricom. NMFS signed a Finding of No Significant Impact on November 21, 2005. NMFS has reviewed the proposed application and preliminarily determined that there are no substantial changes to the proposed action or new environmental impacts or concerns. Therefore, NMFS has determined that a new or supplemental EA or Environmental Impact Statement is likely unnecessary. Before making a final determination in this regard and decision on whether or not to issue a Finding of No Significant Impact for this proposed action, NMFS will review public comments and information submitted by the public and others in response to this notice. The 2005 EA referenced above is available for review at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to authorize the take of marine mammals incidental to VanBlaricom's research activities, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: February 23, 2012.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–4835 Filed 2–28–12; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10 a.m., Friday March 23, 2012.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

Matters To Be Considered

Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the

Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–4856 Filed 2–27–12; 11:15 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

The following notice of a scheduled meeting is published pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, 5 U.S.C. 552b.

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIMES AND DATES: The Commission has scheduled a meeting for the following date: March 9, 2012 at 9:30 a.m.

PLACE: Three Lafayette Center, 1155 21st St. NW., Washington, DC, Lobby Level Hearing Room (Room 1300).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission has scheduled this meeting to consider various rulemaking matters, including the issuance of proposed rules and the approval of final rules. The Commission may also consider and vote on dates and times for future meetings. The agenda for this meeting will be made available to the public and posted on the Commission's Web site at *http://www.cftc.gov* at least seven (7) days prior to the meeting. In the event that the time or date of the meeting changes, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site.

CONTACT PERSON FOR MORE INFORMATION: David A. Stawick, Secretary of the Commission, 202–418–5071.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2012–4867 Filed 2–27–12; 11:15 am]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2012–0008]

Submission for OMB Review; Comment Request

ACTION: Notice and request for comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. The Bureau is soliciting comments regarding the information collection requirements contained in 12 CFR part 1082, State Official Notification Rule that has been submitted to the Office of Management and Budget for review and approval. A copy of the submission may be obtained by contacting the agency contact listed below.

DATES: Written comments must be received on or before March 30, 2012 to be assured of consideration.

ADDRESSES: You may submit comments, identified by *Docket No. CFPB–2012–0008,* to:

CFPB Chief Information Officer: Chris Willey, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006; (202) 435–7741.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Ethan Levisohn, Office of Enforcement, at (202) 435–7055.

SUPPLEMENTARY INFORMATION:

Title: CFPB State Official Notification Rule.

OMB Control Number: 3170–0019. The collection was formerly approved under Treasury Control Number 1505–0237 and has since been transferred to the Bureau.

Abstract: Section 1042 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), Public Law 111–203, requires the Bureau to prescribe rules establishing procedures that govern the process, described in Section 1042(b) of the Dodd-Frank Act, by which State Officials notify the Bureau of actions undertaken pursuant to the authority granted in section 1042(a) to enforce Title X of the Dodd-Frank Act or regulations prescribed thereunder. In accordance with the requirements of the Dodd-Frank Act, the Bureau has published an Interim Final Rule establishing that notice should be provided at least ten calendar days before the filing of an action, with certain exceptions, and setting forth a limited set of information which is to be provided with the notice (which substantially tracks the statutory language). The data will be received each time a State Official files an action to enforce Title X of the Dodd-Frank Act or a regulation promulgated thereunder, as described in the Interim Final Rule and the preamble to the Interim Final Rule. It will be collected by the Bureau (through electronic mail submissions), and specifically by the Office of Enforcement and the Executive Secretary, who will share it as necessary and appropriate within the Bureau and elsewhere in government, pursuant to the process set out in the Interim Final Rule. It will also be collected by the prudential regulators (through postal mail or electronic mail submissions) where relevant. Unless used as part of a legal proceeding in which the Bureau or other government agency is engaged, it is not expected that the information will be shared with the public, unless the information is already made public by the State Official providing the notice.

As discussed, the information provided in the notice will be used by the Bureau (and prudential regulators, where relevant) to stay informed about the enforcement activities of State Officials enforcing Title X of the Dodd-Frank Act and to decide when and how, if at all, to react to such activities.

Type of Review: Renewal.

Affected Public: State or Local Governments.

Estimated Total Annual Burden Hours: The information sent under the notice provisions of the Rule is primarily information which the State Officials providing the notice would have already collected and have available at the time notice is given. It is unlikely that compiling and sending the requested information would require more than thirty minutes of additional work. As this is a new area of law, at this time, it would be impossible to estimate the number of actions which State Officials will file pursuant to Title X the Dodd-Frank Act and, accordingly, the number of notices which the Bureau will receive.

Dated: February 23, 2012.

Chris Willey,

Chief Information Officer, Consumer Financial Protection Bureau.

[FR Doc. 2012–4757 Filed 2–28–12; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Amendment of Federal Advisory Committee.

SUMMARY: Under the provisions of section 724 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84), the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(a), the Department of Defense gives notice that it is amending the charter for the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces (hereafter referred to as ''the Task Force'').

The Task Force, pursuant to 41 CFR 102–3.50(a), is a non-discretionary Federal advisory committee established to (a) access the effectiveness of the policies and programs developed and implemented by the Department of Defense, and by each of the Military Departments to assist and support the care, management, and transition of recovering wounded, ill, and injured members of the Armed Forces; and (b) make recommendations for the continuous improvements of such policies and programs.

The Task Force, pursuant to section 724(c) of Public Law 111–84, no later than 12 months after the date on which all Task Force members have been appointed, and each year thereafter for the life of the Task Force, shall submit an annual report to the Secretary of Defense on the activities of the Task Force, and on the activities of the Department of Defense, to include the Military Departments, to assist and support the care, management, and transition of recovering wounded, ill, and injured members of the Armed Forces.

At a minimum, the Task Force's report shall include the following:

a. The Task Force's findings and conclusions as a result of its assessment of the effectiveness of developed and implemented DoD policies and programs, to include those by each of the Military Departments, to assist and support the care, management, and transition of recovering wounded, ill, and injured members of the Armed Forces.

b. A description of best practices and various ways in which the Department of Defense, to include the Military Departments, could more effectively address matters relating to the care, management, and transition of recovering wounded, ill, and injured members of the Armed Forces, including members of the Regular and Reserve Components, and support for their families.

c. A plan listing and describing the Task Force's activities for the upcoming year covered by its annual report.

d. Such recommendations for other legislative or administrative action that are referred to the Task Force that are deemed by the Department of Defense to be appropriate for measures to improve DoD-wide policies and programs in (a) above, which assist and support the care, management, and transition of recovering wounded, ill, and injured members of the Armed Forces.

The Task Force, for the purposes of its reports, shall fully comply with sections 724(c)(2) and (3) of Public Law 111–84 in all matters dealing with the report's (a) methodology and (b) matters to be reviewed and assessed.

No later than 90 days after receiving the Task Force's annual report, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives the report and the Secretary's evaluation of the report.

No later than six months after receiving the Task Force's annual report, the Secretary of Defense, in consultation with the Secretaries of the Military Departments, shall submit to the Committees on Armed Services of the Senate and the House of Representatives a plan to implement the recommendations of the Task Force's annual report.

The Task Force, pursuant to section 724(b) of Public Law 111–84, shall be comprised of not more than 14 members appointed by the Secretary of Defense.

Pursuant to 724(b)(2) of Public Law 111–84, the Secretary of Defense shall appoint the following, and appointments must be renewed by the Secretary of Defense on an annual basis:

a. At least one member of each of the Regular Components of the Army, the Navy, the Air Force and the Marine Corps;

b. One member of the National Guard;

c. One member of a Reserve Component of the Armed Forces other than the National Guard; and

d. A number of person from outside the Department of Defense equal to the total number of personnel from within the Department of Defense (whether members of the Armed Forces or civilian personnel) who are appointed to the Task Force.

Pursuant to sections 724(b)(2) through (4) of Public Law 111–84, the Secretary of Defense shall appoint persons meeting the following requirements:

a. At least one individual appointed to the Task Force from within the Department of Defense shall be The Surgeon General of an Armed Force.

b. At least one family member of a wounded, ill, or injured member of the Armed Forces or veteran who has experience working with wounded, ill, and injured members of the Armed Forces or their families.

c. The individuals appointed to the Task Force from outside the Department of Defense—

i. With the concurrence of the Secretary of Veterans Affairs, shall include an officer or employee of the Department of Veterans Affairs; and

ii. May include individuals from other departments or agencies of the Federal Government, from State and local agencies, or from the private sector.

d. Persons appointed to the Task Force shall have experience in—

i. Medical care and coordination for wounded, ill, and injured members of the Armed Forces;

ii. Medical case management;

iii. Non-medical case management;

iv. The disability evaluation process for members of the Armed Forces;

v. Veterans benefits;

vi. Treatment of traumatic brain injury and post-traumatic stress disorder;

vii. Family support;

viii. Medical research;

ix. Vocational rehabilitation; or

x. Disability benefits.

There shall be two co-chairs of the Task Force. One of the co-chairs shall be designated by the Secretary of Defense at the time of appointment from among the individuals appointed to the Task Force from within the Department of Defense. The other co-chair shall be selected from among the individuals appointed from outside the Department of Defense by those individuals.

Pursuant to sections 724(e)(1) of Public Law 111–84, Task Force members who are members of the Armed Forces or a civilian officer or employee of the United States shall serve on the Task Force without compensation (other than compensation to which entitled as a member of the Armed Forces or an officer or employee of the United States, as the case may be). Their appointments must be renewed on an annual basis. These Task Force members shall receive travel and per diem when traveling on official Task Force business.

Task Force members, who are not full-time or permanent part-time federal officers or employees, shall be appointed by the Secretary of Defense in accordance with, and subject to, the provisions of 5 U.S.C. 3161 and shall serve as special government employees.

With DoD approval, the Task Force is authorized to establish subcommittees, as necessary and consistent with its

mission. These subcommittees shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and other governing Federal statutes and regulations, and governing DoD policies/procedures.

Such subcommittees shall not work independently of the chartered Task Force, and shall report all their recommendations and advice to the Task Force for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Task Force; nor can they report directly to the Department of Defense or any Federal officers or employees who are not Task Force members.

Subcommittee members, who are not Task Force members, shall be appointed in the same manner as Task Force members. Subcommittee members, if not full-time or part-time government employees, shall be appointed by the Secretary of Defense according to governing DoD policy and procedures. Such individuals shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and shall serve as special government employees, whose appointments must be renewed on an annual basis.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Acting Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Task Force shall meet at the call of the Task Force's Designated Federal Officer, in consultation with the Co-Chairs. The estimated number of Task Force meetings is five per year.

In addition, the Designated Federal Officer is required to be in attendance at all Task Force and subcommittee meetings for the entire duration of each meeting; however, in the absence of the Designated Federal Officer, an Alternate Designated Federal Officer shall attend the entire duration of the meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Force's membership about the Task Force's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces.

All written statements shall be submitted to the Designated Federal Officer for the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*.

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Department of Defense Task Force on the Care, Management, and Transition of Recovering Wounded, Ill, and Injured Members of the Armed Forces. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: February 23, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–4730 Filed 2–28–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2012–OESE–0001]

RIN 1810–AB12

Proposed Priorities, Requirements, Definitions, And Selection Criteria; Teacher Incentive Fund (TIF) Program; CFDA Number: 84.374A

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education proposes priorities, requirements, definitions, and selection criteria under the TIF program. We may use one or more of these priorities, requirements, definitions, and selection criteria for competitions in fiscal year (FY) 2012 and later years. We are taking this action so that TIF-funded performance-based compensation systems (PBCSs) will be successful and sustained mechanisms that contribute to continual improvement of instruction, to increases in teacher and principal effectiveness and, ultimately, to improvements in student achievement in high-need schools. To accomplish these goals, we propose priorities, requirements, definitions, and selection criteria that are designed to ensure that TIF grantees use high-quality LEA-wide evaluation and support systems that identify effective educators in order to improve instruction by informing performance-based compensation and other key human capital decisions.

DATES: We must receive your comments on or before March 30, 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 one time. In addition, please include the Docket ID and the term ''Teacher Incentive Fund'' at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://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.'' A direct link to the docket page is also available at *www.ed.gov/programs/teacherincentive*.
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed priorities, requirements, definitions, and selection criteria, address them to: Office of Elementary and Secondary Education (Attention: Teacher Incentive Fund Comments), U.S. Department of Education, 400 Maryland Avenue SW., Room 3E235, Washington, DC 20202.

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 *http://www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: Kristen Harper. Telephone: (202) 453–6712, or by email: *TIF4comments@ed.gov*.

If you use a telecommunications device for the deaf (TDD), or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

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 priorities, requirements, definitions, and selection criteria, we urge you to identify clearly the specific proposed priority, requirement, definition, or selection criterion that each 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 the proposed priorities, requirements, definitions, and 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, by appointment, in person, at 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. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Purpose of Program: The purpose of the TIF program is to provide financial support to develop and implement sustainable PBCSs for teachers, principals, and other personnel in high-need schools in order to increase educator effectiveness and student achievement in those schools.

Program Authority: The Department of Education Appropriations Act, 2012 (Division F, Title III of Pub. L. 112–74).

The Statutory Requirements

The Department's FY 2012 appropriation provides TIF funds for competitive grants to eligible entities to develop and implement PBCSs for teachers, principals, and other personnel in high-need schools. Eligible entities for these funds are:

(a) Local educational agencies (LEAs), including charter schools that are LEAs.

(b) States.

(c) Partnerships of—

(1) An LEA, a State, or both; and

(2) At least one non-profit organization.

Eligible entities must use TIF funds to develop and implement, in high-need schools, a PBCS that—

(a) Considers gains in student academic achievement, as well as classroom evaluations conducted multiple times during each school year, among other factors; and

(b) Provides educators with incentives to take on additional responsibilities and leadership roles.

A grantee (1) must demonstrate that its PBCS is developed with the input of teachers and school leaders in the schools and LEAs that the grant will serve, and (2) may use TIF funds to develop or improve systems and tools that would enhance the quality and success of the PBCS, such as high-quality teacher evaluations and tools that measure growth in student achievement. In addition, an applicant must include a plan to sustain financially the activities conducted and the systems developed under the grant once the grant period has expired.

Background

The TIF program is based on the premise, supported by abundant research, that teachers are the single most critical in-school factor in improving student achievement.[1] Principals are often cited as the second most influential in-school factor.[2] The TIF program is intended to support the development and identification of effective educators in order to ensure that the most effective teachers and principals are serving where they are needed most, and, ultimately, to improve teaching and learning in the classroom.

With the priorities, requirements, definitions, and selection criteria proposed in this notice, we seek to build on the efforts we began with the FY 2010 TIF competition to align this program, to the extent feasible, with the Department's other programs and initiatives that also recognize that effective teaching and leading are critical factors in improving student achievement. These programs and initiatives—including the State Fiscal Stabilization Fund, the Race to the Top Fund, the School Improvement Grants program, and the Department's recent Elementary and Secondary Education Act of 1965, as amended (ESEA) Flexibility initiative—all focus, to some extent, on the development of systems that measure and support educator effectiveness.

We believe that, to be successful and sustainable, any PBCS (as defined in this notice) must be an integral part of a human capital management system (HCMS) (as defined in this notice) that is well-designed and implemented LEA-wide.

In this notice, we define an HCMS as the system an LEA uses to make decisions affecting its workforce, such as decisions regarding educator (as defined in this notice) recruitment, hiring, placement, retention, dismissal, compensation, professional development, tenure, and promotion. While all LEAs have such systems, not all LEAs refer to such systems as ''human capital management systems'' or view their human capital decisions as part of a comprehensive and cohesive system. Further, some HCMSs are not designed or implemented to contribute to improving instruction and are, therefore, limited in their ability to positively affect student achievement.

We believe that, in order to have a positive effect on student achievement, an LEA's HCMS must be aligned with the LEA's vision of instructional improvement. As defined in this notice, a vision of instructional improvement is a summary of the key competencies and behaviors of effective teaching that an LEA views as necessary to produce high levels of student achievement, as well as how educators acquire or improve these competencies and behaviors. In a well-designed HCMS, an LEA's vision of instructional improvement is reflected in the systems used to evaluate educators and in the criteria used to hire and promote them. The vision is also reflected in communications from LEA leadership to school-based personnel, and in the professional development provided to educators.

For example, an LEA with a vision of instructional improvement that includes using student achievement data to inform instruction might integrate into its HCMS evaluations that assess whether teachers (as defined in this notice) conduct formative assessments on a regular basis and differentiate instruction based on the assessment results. Principal (as defined in this notice) evaluations, in turn, might

[1] Wright, S.P., Horn, S.P., Sanders, W.L. (1997). *Teacher and classroom context effects on student achievement: Implications for teacher evaluation.* Journal of Personnel Evaluation in Education 11:57–67; Rivkin, S.G., Hanushek, E.A., Kain, J.F. (2005). *Teachers, schools, and academic achievement.* Economerica, 73(2):417–458.

[2] Leithwood, K., Louis, K.S., Anderson, S., and Wahlstrom, K. (2004). *Review of research: How leadership influences student learning.* University of Minnesota, Center for Applied Research and Educational Improvement. Found at *http://www.cehd.umn.edu/carei/Leadership/ReviewofResearch.pdf.*

assess the extent to which principals demonstrate instructional leadership in modeling how teachers can use student achievement data to drive instruction. Similarly, professional development aligned with this vision might include helping teachers develop the analytical skills needed to use student achievement data to make instructional decisions.

We believe that integrating a PBCS within an LEA's larger HCMS will help ensure that the PBCS is a successful mechanism for improving classroom instruction and educator effectiveness. Under these proposed priorities, requirements, definitions, and selection criteria, therefore, an LEA would, as part of its HCMS, use valid and reliable educator evaluations, based significantly on student growth (as defined in this notice), to inform human capital decisions, such as decisions concerning recruitment, hiring, placement, retention, dismissal, compensation, professional development, tenure, and promotion. In this way, educator evaluation systems would be an integral component of an LEA's HCMS. Through the use of the data generated by these educator evaluation systems, the LEA would be able to identify strengths and areas for improvement for individual educators and use this information to award performance-based compensation to effective educators.

We believe the coherent approach proposed in this notice, in which educator evaluation systems and a PBCS are integral components of a comprehensive HCMS, will sustain the TIF-supported reforms well beyond the short duration of a TIF grant period. This approach will avoid the sustainability challenges associated with some existing performance-based compensation programs that provide awards using a system that is disconnected from or ancillary to the official evaluation systems an LEA uses to assign educator evaluation ratings. In such instances, using an evaluation for the PBCS that is different from the evaluation used for the educator evaluation systems creates a burdensome duplication of effort that does not advance the coherence and sustainability of the TIF-funded reforms as fully as a comprehensive HCMS would.

Furthermore, we believe that integrating a PBCS within an LEA's HCMS will improve the LEA's ability to attract, retain, and promote effective educators in high-need schools (as defined in this notice) and hard-to-staff subjects in these schools. To achieve this goal, we propose that a TIF grantee develop and implement performance-based compensation within its comprehensive, district-wide HCMS to help ensure high-need schools are staffed with effective teachers. To meet the proposed definition of a PBCS in this notice, the PBCS must (in addition to meeting other definitional requirements described elsewhere in this notice) provide additional compensation based on one of two basic PBCS design options: (1) Additional compensation for teachers and principals who have been deemed effective or, as an alternate approach, (2) additional compensation for teachers who have been deemed effective and agree to take on career ladder positions (as defined in this notice) while also compensating effective principals. The first option would compensate educators based solely on a determination of their effectiveness, while the second option would reward effective teachers who agree to serve as school-based instructional leaders in, for example, master teacher or coach positions. Although both options require additional components to conform with the PBCS definition included in this notice, we propose to give each applicant a choice on the basic design of the PBCS it chooses to develop and implement. Whichever approach an applicant proposes to implement, the PBCS must use the information generated by the educator evaluation systems to recognize and reward the important contribution of effective educators in high-need schools. We believe this recognition and reward, especially when combined with other reforms, such as those that improve working conditions, will assist LEAs in attracting and retaining effective educators in high-need schools.

Proposed Priorities

This notice contains five proposed priorities.

Types of Priorities

We may choose, in the notice of final priorities, requirements, definitions, and selection criteria, to designate any of these priorities as absolute, competitive preference, or invitational priorities, or to include the substance of these priorities in the requirements or the selection criteria. We may also decide to include the substance of the requirements or the selection criteria in the priorities.

Under an absolute priority, as specified by 34 CFR 75.105(c)(3), we would consider only applications that meet the priority. Under a competitive preference priority, we would give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

With an invitational priority, we would signal our interest in receiving applications that meet the priority; however, consistent with 34 CFR 75.105(c)(1), we would not give an application that meets an invitational priority preference over other applications.

Proposed Priority 1—An LEA-Wide Human Capital Management System (HCMS) With Educator Evaluation Systems at the Center

Background

The purpose of this priority is to support State and LEA efforts to strengthen LEAs' HCMSs, of which the PBCS is a part, by using rigorous evaluation systems to inform various human capital decisions. For several reasons, we believe that a PBCS is more likely to be successful and improve teaching and learning when it is integrated within an LEA's HCMS. First, a comprehensive HCMS provides a mechanism through which an LEA can broadly communicate the competencies of effective teaching. By evaluating a teacher based on these competencies, the LEA is able to signal their importance. Second, a comprehensive HCMS provides a mechanism through which an LEA can marshal the resources and expertise needed to improve educator effectiveness, the primary objective of a PBCS. For example, evaluation results that are used to identify educators for a performance-based award could also reveal the need for a particular type of professional development to support struggling educators. As part of its HCMS, the LEA could ensure that its professional development office is informed about the identified need so that the appropriate professional development is delivered. Likewise, a comprehensive HCMS could provide an LEA with information about educator effectiveness that the LEA uses in recruiting new talent to its high-need schools. Thus, so long as the LEA staff who are responsible for implementing the HCMS have the authority and resources required to respond to needs identified by the HCMS, the HCMS will do more than simply provide the important evaluation information that is necessary to determine which educators

are eligible for performance-based compensation.

Further, we believe that an LEA is more likely to sustain a PBCS that is embedded within a comprehensive HCMS. Development and implementation of high-quality evaluation systems within an LEA-wide HCMS, as proposed in this notice, would require the involvement of a variety of LEA stakeholders and the commitment of LEA leadership. We believe that these educator evaluation systems, and their expanded use for human capital decisions, will produce far-reaching change throughout the LEA. The high-level and system-wide investment required to develop an evaluation-driven HCMS, and the fundamental improvements it will generate, will help ensure that the HCMS, including its PBCS component, is likely to last far beyond the short duration of a TIF grant.

To advance its vision of instructional improvement, an LEA must adopt carefully designed human capital strategies. As one example of a human capital strategy, an LEA might develop a professional development program that addresses a particular high-priority competency, and the LEA might implement that program in schools in which the teacher evaluations reveal the highest need. As another example, an LEA might develop an aggressive program of financial incentives to encourage effective teachers of hard-to-staff subjects to accept teaching positions in high-need schools. As a third example, an LEA might elect to provide teachers in high-need schools with extra resources, such as specially trained para-educators who help provide routine intervention services for struggling students.

For these reasons, through proposed Priority 1, we would require each applicant for a TIF grant to include in its application a description of how the HCMS of each participating LEA—as it exists currently and with any modifications that may be needed—would (1) align with the LEA's vision of instructional improvement; (2) use evaluation information to inform human capital decisions, such as recruitment, hiring, placement, retention, dismissal, compensation, professional development, tenure, and promotion; and (3) include human capital strategies, such as extra compensation, opportunities for instructional leadership, extra resources, improved working conditions, and quality professional development, to ensure that high-need schools are able to attract and retain effective educators. To the extent that an applicant needs to modify its current HCMS to incorporate these features, the applicant must describe its planned modifications and provide a timeline for implementing them.

Proposed Priority 1

To meet this priority, the applicant must include, in its application, a description of its LEA-wide HCMS, as it exists currently and with any modifications proposed for implementation during the project period of the grant. The application must describe—

(1) How the HCMS is or will be aligned with the LEA's vision of instructional improvement;

(2) How the LEA uses or will use the information generated by the evaluation systems it describes in its application to inform key human capital decisions, such as decisions on recruitment, hiring, placement, retention, dismissal, compensation, professional development, tenure, and promotion;

(3) The human capital strategies the LEA uses or will use to ensure that high-need schools are able to attract and retain effective educators; and

(4) To the extent modifications are needed to an existing HCMS to ensure that it includes the features described in response to paragraphs (1), (2), and (3) of this priority, a timeline for making the modifications, provided that the use of evaluation information to inform the design and delivery of professional development and the award of performance-based compensation under the applicant's proposed PBCS in high-need schools begins no later than the third year of the grant's project period.

Proposed Priority 2: LEA-Wide Educator Evaluation Systems Based, in Significant Part, on Student Growth

Background

In proposed Priority 2, we seek to build on our prior efforts to support educator evaluation systems as critical components of an LEA's implementation of effective PBCSs. As we did in the FY 2010 TIF competition, we propose to require applicants to establish evaluation systems for both teachers and principals that are based on student growth, observations, and other factors selected by the applicant. Consistent with the authorizing statute, these evaluations would be used to assess the performance of educators throughout the LEA and, in high-need schools, would serve as the basis for their eligibility for performance-based compensation under a TIF-funded PBCS.

For the reasons outlined in the following paragraphs, we believe that PBCSs in high-need schools will be more successful if educator evaluation systems are implemented on an LEA-wide basis and generate an overall effectiveness rating for each educator employed by the LEA. The LEA can then use an educator's overall evaluation rating to make performance-based compensation determinations in high-need schools under its TIF-funded PBCS.

Implementing Educator Evaluation Systems LEA-wide. We believe that reforms of educator evaluation systems are more likely to receive the broad LEA commitment that is crucial to their success and sustainability if the same systems are used to evaluate every educator within an LEA. In proposing an LEA-wide approach, we seek to prevent situations in which a TIF project conducts evaluations of staff employed in a subset of an LEA's schools that are separate from the official educator evaluation systems the LEA uses to provide overall evaluation ratings. With such ancillary evaluations, a teacher in a high-need school might be evaluated once to determine eligibility for a TIF-funded performance-based award and then be evaluated again under separate criteria that the LEA uses for purposes of the teacher's overall performance rating. Consequently, when TIF funding ends, the ancillary evaluations that had been supported by a TIF-funded project are also likely to end.

Similarly, when a TIF project operates in isolation from an LEA's official evaluation system, the needs of teachers, principals, or schools identified through the TIF-funded evaluation process are less likely to be factored into the LEA-wide support systems operated by the LEA's central office, such as school improvement plans and related professional development programs. In such a situation, the TIF-funded PBCS would not benefit from the economies of scale and resources that LEA-wide evaluation systems can offer.

Additionally, the educator evaluation systems described in proposed Priority 2 are, in themselves, extremely valuable tools for professional development and improvement.[3] When the evaluation rubrics of these systems are aligned with the key competencies the LEA has identified in its vision of instructional improvement, the feedback and professional learning inherent in the

[3] Taylor, Eric S., John H. Tyler. (2011). ''The Effect of Evaluation on Performance: Evidence from Longitudinal Student Achievement Data of Mid-career Teachers,'' NBER Working paper w16877. Retrieved November 7, 2011: *http://www.nber.org/papers/w16877.*

evaluation process will give all educators a clearer understanding of what the LEA has identified as the key competencies needed to be effective educators.

For these reasons, we believe that LEA-wide educator evaluation systems will strengthen the sustainability of TIF-funded efforts to improve the practice of educators across the LEA, including those in high-need schools, and increase the pool of effective educators available to serve in high-need schools.

Overall Evaluation Rating. In this priority, we propose to require that an LEA's evaluation systems aggregate the ratings on measures included in its evaluation to generate, at least annually for each educator, an overall evaluation rating (or overall rating), such as highly effective, effective, or not effective. For both teachers and principals, this overall rating would be based, in significant part, on student growth. For the vast majority of teachers, it would be based, in significant part, on student growth at the classroom level. By classroom-level student growth, we mean the academic growth of the students in the teacher's own classroom. LEAs would also have discretion to use student growth at the grade or school-wide level for teachers who do not have regular instructional responsibilities. For such teachers, which may include, for example, reading specialists or teachers in career ladder positions with no regular instructional responsibilities, student growth data at the classroom level may not be appropriate or available. Such teachers may be evaluated based on student growth in either the classrooms of the teachers they assist, or at the school level. We anticipate that LEAs will develop specialized evaluation rubrics that reflect the unique responsibilities required of teachers in these positions, as well as their unique contribution to improving growth in student achievement.

We believe that an overall rating is necessary to facilitate a meaningful PBCS in the high-need schools identified for the TIF project. This proposed priority would be implemented in conjunction with Proposed Requirement 1—Performance-Based Compensation for Teachers, Principals, and Other Personnel, which is described later in this notice. Under Proposed Requirement 1, only educators who earn an overall rating of effective or higher would be eligible for a performance-based award under the LEA's PBCS. By proposing that the PBCS use this overall rating, we intend to ensure that educators eligible for performance-based compensation in high-need schools perform at minimum thresholds on all aspects of the evaluation rubric, including the student growth outcome measure. Thus, in evaluating and rewarding teachers receiving performance-based compensation under a TIF program, LEAs could not ignore extremely low student growth, and focus exclusively, for example, on a teacher's classroom practice measure. We believe that educator evaluations should consider both practice and student outcome data such that, as required by the TIF authorizing statute, student growth is a significant part of the overall rating.

In addition, an overall rating provides the LEA with a single index—one for teachers and one for principals—with which to identify effective educators. The LEA can use this information to identify effective educators and recruit them to high-need schools. With data on the distribution of overall ratings, LEA leaders would also be able to examine the distribution of effective educators across its schools and ensure that effective educators are equitably distributed in high-poverty and high-minority schools.

Although we are proposing an overall rating that aggregates the various measures included in an LEA's educator evaluations, we also recognize that the individual, disaggregated measures offer invaluable information for an educator's professional growth. Educators value insightful feedback based on observations of their practice and gain perspective on their efforts from a review of their students' academic growth data. We expect TIF grantees to use the data generated from their evaluation systems to identify the professional development needs of their educators, using this information to guide focused and differentiated professional development as a strategy to improve instruction, thereby contributing to improved educator effectiveness and student achievement.

Finally, we note that the requirement to provide an overall evaluation rating in this proposed priority is consistent with the requirements of the Race to the Top Fund program. Similar to Race to the Top applicants, TIF applicants must propose evaluation systems that differentiate effectiveness among educators. We anticipate that, in their proposed evaluation rubric, applicants would reserve overall ratings of effective or higher for educators whose students achieve an acceptable rate of student growth (e.g., at least one grade level in an academic year). Similarly, we would expect that an overall rating of highly effective would be reserved for an educator whose students achieve high rates of growth (e.g., at least one and one-half grade level in an academic year).

Proposed Priority 2

To meet this proposed priority, an applicant must include, as part of its application, a plan describing how it will develop and implement its proposed LEA-wide educator evaluation systems. The plan must describe—

(1) The frequency of evaluations, which must be at least annually;

(2) The evaluation rubric for educators that includes at least three performance levels and the following—

(i) Two or more observations during each evaluation period;

(ii) Student growth, which for the evaluation of teachers with regular instructional responsibilities must include growth at the classroom level; and

(iii) Additional factors determined by the LEA;

(3) How the evaluation systems will generate an overall evaluation rating that is based, in significant part, on student growth; and

(4) The applicant's timeline for implementing its proposed LEA-wide educator evaluation systems. Under the timeline, the applicant must implement these systems as the LEA's official evaluation systems for assigning overall evaluation ratings for at least a subset of educators or schools no later than the beginning of the second year of the grant's project period. The applicant may phase in the evaluation systems by applying them, over time, to additional schools or educators so long as the new evaluation systems are the official evaluation systems the LEA uses to assign overall evaluation ratings for all educators within the LEA no later than the beginning of the third year of the grant's project period.

Proposed Priority 3: Improving Student Achievement in Science, Technology, Engineering, and Mathematics (STEM)

Background

We believe that a PBCS can be an important part of a coherent strategy that advances the national goal of increasing student achievement in the areas of science, technology, engineering, and mathematics in high-need schools. This priority, therefore, supports the creation of STEM-focused instructional leadership positions with the goal of helping LEAs build a ''corps'' of STEM master teachers in high-need schools.

The development and support of a cadre of master STEM teachers has been recommended by many in the field of

STEM education, perhaps most prominently by the National Research Council (NRC) in its 2000 report, Educating Teachers of Science, Mathematics, and Technology: New Practices for the New Millennium. As NRC noted in its report, STEM master teachers can assume a variety of different roles to support improvements in instruction and promote higher levels of student achievement. They can serve as specialists in high-need schools; design and provide professional development to other teachers; coach struggling teachers or serve as mentors to novice teachers; develop curriculum and classroom materials to support instruction; and work with institution of higher education faculty to deliver pre-service or in-service professional learning.

To meet this priority, an applicant must propose, at a minimum, to use its PBCS to compensate teachers who agree to take on career ladder positions to improve STEM instruction and achievement throughout the school. Although applicants will determine the process and factors they will use to select strong candidates for these career ladder positions, we propose that, to meet this priority, an applicant must restrict eligibility for STEM-focused career ladder positions to STEM teachers who receive an overall rating of effective or higher under the evaluation system described in the application, and select candidates based on criteria that are predictive of ability to lead other teachers. Further, an applicant may—in addition to rewarding effective STEM teachers who agree to take on STEM-focused career ladder positions—include other features in its plan, such as offering financial incentives to recruit teachers who receive an overall rating of effective or higher and agree to teach a STEM subject in high-need schools. An applicant must also describe how the HCMS will support a broad commitment to STEM education, including how it plans to provide challenging STEM coursework to students, support teachers in the delivery of that STEM coursework, and develop partnerships with local STEM experts.

Proposed Priority 3

To meet this priority, an applicant must include a plan in its application that describes the applicant's strategies for improving instruction in STEM subjects through various components of the LEA's HCMS, including its professional development, evaluation systems, and PBCS. At a minimum, the plan must describe—

(1) How the LEA will develop a corps of STEM master teachers, who are skilled at modeling for peer teachers pedagogical methods for teaching STEM skills and content at the appropriate grade level, by providing additional compensation to teachers who—

(i) Receive an overall evaluation rating of effective or higher under the evaluation system described in the application;

(ii) Are selected based on criteria that are predictive of the ability to lead other teachers;

(iii) Demonstrate effectiveness in one or more STEM subjects; and

(iv) Accept STEM-focused career ladder positions;

(2) How the LEA will identify, evaluate, and develop the unique competencies that, based on evaluation information or other evidence, characterize effective STEM teachers;

(3) How the LEA will identify hard-to-staff STEM subjects, and use the HCMS to attract effective teachers to positions providing instruction in those subjects;

(4) How the LEA will leverage community support, resources, and expertise to inform the implementation of its plan; and

(5) How the LEA will ensure that financial and non-financial incentives, including performance-based compensation, offered to reward or promote effective STEM teachers are adequate to attract and retain persons with strong STEM skills.

(6) How the LEA will ensure that students have access to and participate in rigorous and engaging STEM coursework.

Priority 4: New Applicants to the Teacher Incentive Fund

Background

Under proposed Priority 4, we seek to broaden the impact of the TIF program by giving priority to LEAs not previously served by a TIF project. This priority will help provide such LEAs with a greater opportunity to receive TIF funding to support their efforts to implement new strategies—sustainable performance-based compensation, in particular—for attracting and retaining effective teachers in their high-need schools.

Elsewhere in this notice, we have proposed selection criteria to award points to applicants that have prior experience using evaluation information to inform human capital decisions. Together with this proposed priority, we hope to support and further the efforts of LEAs that, without the aid of prior TIF financial support, have already taken steps to develop and implement the evaluation systems necessary to support sustainable and successful PBCSs.

Proposed Priority 4

To meet this priority, an applicant must provide an assurance, which the Department accepts, that each LEA to be served by the proposed project has not previously participated in a TIF-supported project.

Proposed Priority 5—An Educator Salary Structure Based on Effectiveness

Background

As previously discussed, some existing performance-based compensation programs face sustainability challenges due to their reliance on performance evaluations that are disconnected from the official evaluation systems an LEA uses to assign educator evaluation ratings. Another challenge to a PBCS's sustainability occurs where educator incentives are an ancillary component (e.g., a one-time bonus) of an educator's compensation. In such cases, performance-based compensation can more easily be eliminated, particularly in difficult budget times. One way to ensure that a PBCS continues after the end of the grant period, and is sustained through periods of an LEA's budget fluctuations, is to award the additional compensation described under Proposed Requirement 1 (Performance-Based Compensation for Teachers, Principals, and Other Personnel) not as incentive awards or bonuses, but as part of an educator's salary. To do so, an applicant would develop a plan to modify its existing single salary schedule to create a new salary structure based on educator effectiveness and other factors. While advancement on the revised salary structure may be based on a number of factors, educator effectiveness would be a required component. We believe that grantees that are able to move to a new salary structure of this kind based on educator effectiveness will be most likely to continue to financially reward teachers and principals for their performance after the grant period ends.

Proposed Priority 5

To meet this priority, an applicant must propose a comprehensive revision to each participating LEA's salary structure as part of its plan for implementing its proposed PBCS. At a minimum, the applicant must describe—

(a) How each LEA will use overall evaluation ratings based, in significant

part, on student growth to determine educator salaries;

(b) The salary increase that educators with an overall evaluation rating of effective or higher would receive in each LEA, as well as how TIF funds used for salary increases would be used only to support the additional cost of the revised salaries for educators in high-need schools; and

(c) Each LEA's timeline for using the proposed salary structure to compensate educators in high-need schools, provided that the use of overall evaluation ratings for determining educator salaries begins no later than the third year of the project period.

Proposed Requirements

In order to promote sustained and successful PBCSs in high-need schools, we propose to establish seven requirements. We may apply one or more of these requirements in any year in which we run a competition under the TIF program. These requirements are in addition to the statutory requirements that apply to the program and any priorities, definitions, and selection criteria we announce in the notice inviting applications for a TIF competition.

Proposed Requirement 1—Performance-Based Compensation for Teachers, Principals, and Other Personnel

Background: Under the TIF authorizing legislation and appropriations language, to receive a TIF grant, eligible entities must develop and implement in high-needs schools a PBCS that considers gains in student academic achievement as well as classroom evaluations and provides educators with incentives to take on additional responsibilities and leadership roles. Consistent with this statutory mandate, we propose to require each applicant to describe, in its application, how its PBCS meets the definition of a PBCS set forth in this notice. Each applicant would thereby need to describe how it will provide, through its PBCS, performance-based compensation in one of the following ways: (1) Additional compensation for teachers and principals in high-need schools who earn an overall rating of effective or higher under the evaluation systems described in its application and additional compensation for effective teachers who take on additional responsibilities and leadership roles; or (2) additional compensation for teachers in high-need schools who both earn an overall rating of effective or higher under the evaluation system described in its application and take on career ladder positions. This second option must also include additional compensation for principals under at least one of the following conditions: additional compensation for principals who earn an overall rating of effective or higher under the evaluation system described in the application or additional compensation for effective principals who agree to take on additional responsibilities and leadership roles.

The following examples illustrate how different PBCSs can meet the definition of performance-based compensation proposed in this notice:

Example 1: An applicant might propose a PBCS that provides a stipend for all teachers and principals who are deemed effective or higher. This PBCS does not include compensation for career ladder positions, but it does offer compensation for teachers who take on additional responsibilities and leadership roles by providing special stipends for teachers who agree to observe their peers for evaluative purposes. By proposing to design its PBCS in this way, the applicant would demonstrate in its application that its PBCS meets the first option provided in the definition of performance-based compensation, as described in the previous paragraphs.

Example 2: An applicant might propose a PBCS that provides compensation to teachers who are deemed effective or higher only if they also take on a career ladder position, such as mentor teacher or instructional coach. In addition, the applicant's PBCS would provide compensation to principals who are deemed effective or higher. By proposing to design its PBCS in this way, the applicant would demonstrate in its application that its PBCS meets the second option under the definition of performance-based compensation, as described in the previous paragraph. In this PBCS, there likely would be fewer career ladder positions than effective teachers who are eligible to fill them, so only a subset of effective teachers would actually earn the additional compensation associated with this approach.

Additionally, under this proposed requirement, an applicant that chooses to address either of the following areas as part of its PBCS also must describe in its application how it will provide performance-based compensation to: (a) other personnel in high-need schools based, in significant part, on student growth, which may include whole-school level student growth; or (b) educators who have received an overall rating of effective or higher under the evaluation systems described in the application (or under a comparable evaluation system in another LEA) and who either: transfer from a school in the LEA that is not high-need to a high-need school, or, for educators who previously worked in another LEA, are hired to work in a high-need school.

Through this requirement and its reference to the proposed definition of a PBCS, we are proposing that an applicant's PBCS meet several requirements. First, we propose to require that, for all components of an applicant's proposed PBCS relating to educators, additional compensation could only be provided if it were based on the educator's overall rating, as opposed to student growth alone or classroom observations alone. As discussed in the *Background* section for proposed Priority 2, meeting this requirement would ensure that student growth is a significant factor in determining who is eligible for additional compensation.

Second, only teachers and principals who receive an overall rating of effective or higher under the evaluation systems described in the TIF application would be eligible to receive additional compensation, including compensation for taking on additional responsibilities and leadership roles. By building a measure of educator effectiveness into the ''additional responsibilities and leadership roles'' component of the PBCS, we believe that we can ensure that those taking on these responsibilities and roles through the TIF program have a record of effectiveness in the classroom.

Third, through this proposed requirement and its reference to the proposed definition of a PBCS, grantees could use TIF-funded PBCSs as a recruitment tool. This option would be available, at an applicant's discretion, to supplement the PBCS components that are required. If a grantee elects to offer compensation as a recruitment tool, educators who receive an overall rating of effective or higher would be eligible to receive additional compensation under the PBCS if they transfer within the LEA from a non-high-need school to a high-need school, or, for educators who previously worked in another LEA, if they are hired to work in a high-need school. Before compensating effective educators who are recruited from another LEA, an LEA would have to establish that the other LEA uses an evaluation system that is comparable to the system described in the application. To be comparable, the evaluation system must, at a minimum, generate an overall rating that is based on two or more observations each year; student growth, in significant part; and other factors determined by the evaluating LEA.

Finally, consistent with the TIF authorizing legislation and appropriations language, this requirement and its reference to the proposed definition of a PBCS would

provide that an applicant may also include in its PBCS a component that recognizes and rewards school-based staff who are neither teachers nor principals. These staff, referred to as ''other personnel'' in TIF's authorizing statute, might include, for example, school counselors, media specialists, or para-educators. Under this proposed requirement and its reference to the proposed definition of a PBCS, an applicant would have broad discretion in designing the criteria for performance-based compensation for other personnel, but any such criteria would need to include, in significant part, student growth, which may be whole school-level growth. (Whole school-level growth may be one option for this purpose, as other personnel may not have instructional responsibilities for a specific group of students on an on-going basis. LEAs may also consider developing specialized rubrics to assist in evaluating other personnel.)

The following charts illustrate how applicants can meet proposed requirement 1 by describing a PBCS that meets each of the statutorily prescribed elements of such a system. As discussed earlier in this notice, under the TIF authorizing legislation, a PBCS must, at a minimum—

- Provide performance-based compensation to both teachers and principals;
- Base the performance-based compensation on student growth, multiple observations, and other factors; and
- Provide incentives to educators to take on additional responsibilities and leadership roles.

With these statutorily-required elements in mind, we defined the term *PBCS* so that it would give applicants flexibility in designing a PBCS that has features that meet the minimum statutory requirements (see *Chart 1*) and identifies additional features that could be (but are not required to be) implemented as part of a PBCS (see *Chart 2*).

CHART 1—PBCS DESIGN OPTIONS TO MEET STATUTORY REQUIREMENTS

Design model	*Mandatory elements*
1 * ..... * Corresponds to paragraph (a)(1) of the PBCS definition.	Proposed PBCS provides both of the following: (1) Additional compensation for *teachers and principals* who receive an overall rating of effective or higher under the evaluation systems described in the application. (2) Of those teachers and principals eligible for compensation under paragraph (1), additional compensation for *teachers and, at the applicant's discretion, for principals,* who take on *additional responsibilities and leadership roles* (as defined in this notice).
2 * ..... * Corresponds to paragraph (a)(2) of the PBCS definition.	Proposed PBCS provides both of the following: (1) Additional compensation for *teachers* who receive an overall rating of effective or higher under the evaluation system described in the application and who take on *career ladder positions* (as defined in this notice). (2) Additional compensation for one or both of the following: (A) *Principals* who receive an overall rating of effective or higher under the evaluation system described in the application, or (B) *Principals* who receive an overall rating of effective or higher under the evaluation system described in the application and who take on *additional responsibilities and leadership roles* (as defined in this notice).

Regardless of whether an applicant chooses to design its PBCS under Model 1 or Model 2, as described in Chart 1, it may also include, as part of its PBCS the following:

CHART 2—PBCS OPTIONAL FEATURES

	Optional elements
Compensation for Transfers to High-Need Schools.	Proposed PBCS provides compensation for educators (*which at the applicant's option may be for teachers or principals or both*) who receive an overall rating of effective or higher under the evaluation systems described in the application or under comparable evaluation systems in another LEA, and who either: (1) Transfer to a high-need school from a school of the LEA that is not high-need, or (2) For educators who previously worked in another LEA, are hired to work in a high-need school.
Compensation for Other Personnel.	Proposed PBCS provides compensation for other personnel, who are not teachers or principals, based on performance standards established by the LEA so long as those standards, in significant part, include student growth, which may be school-level student growth.

Requirement: Each applicant must describe, in its application, how its proposed PBCS will meet the definition of a PBCS set forth in this notice.

Note: To ensure that the funded applications reflect a diversity of PBCSs, the Secretary reserves the right to fund a sufficient number of high-quality Design Model 1 and Design Model 2 projects.

Proposed Requirement 2—Involvement and Support of Teachers and Principals

Background: The TIF authorizing statute requires the input of teachers and principals in the schools and LEAs to be served by the grant in the development of the PBCS. Consistent with this statutory requirement, we propose to require each applicant to include in its application evidence of the involvement of educators in the participating LEAs in the design of the PBCS, as well as in the design of the underlying evaluation systems that inform the PBCS. Further, under this requirement, an applicant would need to include in its application evidence demonstrating how educators in the participating LEAs will be involved on an ongoing basis with the implementation of the PBCS and the evaluation systems.

We propose this requirement because we believe that ongoing involvement by educators in the development and implementation of the PBCS and evaluation systems is critical to the success and sustainability of a PBCS and that educators are more likely to have confidence in these reforms, and embrace them, if they have had a role in developing and implementing them.

As proposed, an applicant would have discretion in the evidence it submits to demonstrate that it has met this requirement. To demonstrate involvement by educators in the design of its PBCS, for example, an applicant might describe the design committee and how educators were represented on the committee. To demonstrate on-going involvement of educators in the proposed project, an applicant might describe the organizational structures that it will put in place to ensure that educators are routinely involved in decisions regarding the implementation of the PBCS and evaluation systems. Because expressions of educator support are another demonstration of educator involvement, we would encourage applicants to submit letters of support for their proposed PBCS from educators and educator organizations. To help us evaluate the quality of the evidence submitted, we are proposing that an applicant indicate in its application whether a union is the exclusive representative of either teachers or principals in each participating LEA.

Requirement: In its application, the applicant must include—

(a) Evidence that educators in each participating LEA have been involved, and will continue to be involved, in the development and implementation of the PBCS and evaluation systems described in the application;

(b) A description of the extent to which the applicant has educator support for the proposed PBCS and educator evaluation systems; and

(c) A statement indicating whether a union is the exclusive representative of either teachers or principals in each participating LEA.

Proposed Requirement 3—Documentation of High-Need Schools

Background: Consistent with the statutory requirement that all staff participating in the PBCS work in schools that are high-need, we propose to require each applicant to demonstrate, in its application, that it will implement the proposed PBCS component of its HCMS in high-need schools. This requirement would specify that an applicant must identify the schools in which the PBCS would be implemented. For any high-poverty school identified, the applicant must provide school-level data demonstrating that each school to be served by the PBCS is a high-need school. We would require school-level data for high-poverty schools, as opposed to LEA-level data, because the TIF authorizing statute requires that the school—rather than the LEA—be high-need.

In this notice, we propose to expand the definition of high-need school that was used in the previous TIF competitions to include schools identified as in need of improvement under other Department programs. With this change, it is our intent to help LEAs integrate their TIF project with other activities supported by other Department programs such as the School Improvement Fund, Race to the Top, and ESEA flexibility.

Requirement: Each applicant must demonstrate, in its application, that the schools participating in the implementation of the TIF-funded PBCS are high-need schools (as defined in this notice), including high-poverty schools (as defined in this notice), priority schools (as defined in this notice), or persistently lowest-achieving schools (as defined in this notice). Each applicant must provide, in its application—

(a) A list of high-need schools in which the proposed PBCS would be implemented; and

(b) For each high-poverty school listed, the most current data on the percentage of students who are eligible for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act or are considered students from low-income families based on another poverty measure that the LEA uses (see section 1113(a)(5) of the ESEA (20 U.S.C. 6313(a)(5))). Data provided to demonstrate eligibility as a high-poverty school must be school-level data; the Department will not accept LEA- or State-level data for purposes of documenting whether a school is a high-poverty school.

(c) For any priority schools listed, documentation verifying that the State has received approval of a request for ESEA flexibility, and that the schools have been identified by the State as priority schools.

Proposed Requirement 4—SEA and Other Group Applications

Background: We propose to require an SEA applicant to apply with one or more LEAs that would implement the PBCS, evaluation systems, and HCMS proposed in its application. This proposed requirement would ensure that any SEA applying for a TIF grant has obtained the full commitment of each LEA that will be responsible for developing and implementing the HCMS, including the educator evaluation systems and the PBCS, described in the application.

Similarly, we propose to require any SEA or other applicant that proposes to work with one or more additional entities to implement the HCMS (including the educator evaluation systems and the PBCS) described in the application to submit, with the application, a memorandum of understanding (MOU) or other binding agreement that describes the activities each entity proposes to undertake and that conforms to 34 CFR 75.128 and 75.129. In each of these ''group-application'' situations, each entity would be considered a grantee—with the application designating the lead applicant. This proposed requirement would clearly apply to a non-profit applicant that, by statute, must apply in partnership with one or more LEAs or SEAs, as well as to an SEA applicant that would need to apply with one or more LEAs, and in other circumstances where a project would involve multiple LEAs, SEAs, or non-profit organizations (e.g., an application from two or more LEAs). The MOU or other binding agreement would not only satisfy the group application requirements in 34 CFR 75.128 and 75.129, but it would also ensure that an applicant has consulted with the entities with which it proposes to collaborate, as appropriate, to clarify the entities' respective responsibilities.

We expect to include, in the application package for the FY 2012 TIF grant competition, a sample MOU. Although an applicant would not be required to use this sample MOU, and the sample may be modified as needed, the sample MOU would be one way to address this proposed requirement.

Requirement

(a) Applications from the following are group applications:

(1) Any application from two or more LEAs.

(2) Any application that includes one or more SEAs.

(3) Any application that includes a nonprofit organization.

(b) An applicant that is a non-profit organization must apply in a partnership that includes one or more LEAs, and must identify in the application the LEA(s) and any SEA(s) with which the proposed project would be implemented.

(c) An applicant that is an SEA must apply for a grant under this program as part of a group application that includes one or more LEAs in the same State as

the SEA, and must identify in the application the LEA(s) in which the project would be implemented.

(d) All group applications must include a Memorandum of Understanding (MOU) or other binding agreement signed by all of the members of the group. At a minimum, the MOU or other agreement must include—

(1) A commitment by each participating LEA to implement the HCMS, including the educator evaluation systems and the PBCS, described in the application;

(2) An identification of the lead applicant;

(3) A description of the responsibilities of the lead applicant in managing any grant funds and ensuring overall implementation of the proposed project as described in the application if approved by the Department;

(4) A description of the activities that each member of the group will perform; and

(5) A statement binding each member of the group to every statement and assurance made in the application.

(e) In any group application identified in paragraph (a) of this *Requirement,* each entity in the group is considered a grantee.

Proposed Requirement 5—Submitting an Application for One Competition

Background: If the Assistant Secretary designates proposed Priority 3 as an absolute priority in a competition in fiscal year (FY) 2012 or later years, the Assistant Secretary may conduct a separate competition for TIF funds with additional selection criteria related to the plan described under Priority 3 relating to STEM (TIF Competition with a Focus on STEM). Under this proposed requirement, applicants could apply for either the TIF Competition with a Focus on STEM or a general competition (General TIF Competition), but not both. We propose this requirement to ensure that applicants develop proposals that are of high quality under the competition to which the applicant chooses to apply.

Requirement: An applicant may submit an application for the General TIF Competition or the TIF Competition with a Focus on STEM, but may not submit an application for both.

Proposed Requirement 6—Use of TIF Funds To Support the PBCS

Background: Through this requirement, we propose a very flexible approach to the use of TIF funds for building the basic infrastructure that is necessary to make a PBCS successful and sustainable. At the same time, we propose to restrict how TIF funds can be used to compensate educators. We believe this approach will effectively balance the need for flexibility, so that a grantee can make its PBCS successful, with the need to ensure that PBCSs achieve the program's purpose of attracting, retaining, and promoting effective educators in high-need schools.

The TIF program's authorizing statute provides that TIF funds may be used to develop or improve systems and tools that will benefit the entire LEA. Thus, TIF funds may be used to support the costs of these systems and tools that are incurred by a participating LEA (or by an SEA or non-profit organization that has applied with one or more LEAs) so long as the costs are for systems and tools that will benefit the participating LEA's PBCS. Examples of these costs include the costs of developing or improving high-quality teacher evaluations and tools to measure growth in student achievement. TIF funds could also be used to enhance or develop the data systems that will be critical both for measuring student growth and for collating the educator evaluation information needed to identify school and educator needs.

While TIF funds may support the costs of developing and improving systems and tools for the entire LEA in which the TIF-funded PBCS is implemented, they may not be used to implement the PBCS (e.g., to pay the costs of the performance-based compensation awards to teachers, principals, or other personnel) in schools that are not high-need schools. An LEA would have to use non-TIF funds to support any proposed performance-based compensation in its schools that are not high-need. Similarly, in high-need schools, TIF funds could support the costs of providing evaluation-driven professional development, but non-TIF funds would be needed to provide any such professional development in non-high-need schools.

Finally, under this proposed requirement, a grantee could use TIF funds to provide additional compensation for effective educators in high-need schools through its PBCS, but it could not use TIF funds to compensate educators for activities that have little or no connection to recognizing, rewarding, and supporting effective teaching and leading.

Based on our experience with current TIF projects, we believe that it is appropriate to define the circumstances under which LEAs can use TIF funds to compensate educators. TIF funds would only be used to compensate educators based on the educator's demonstration of effectiveness under the evaluation systems included in the application. For example, we do not believe it is appropriate to use TIF funds to compensate teachers for their attendance or for their willingness to sponsor a student club. By themselves, these activities do not systemically support teacher effectiveness and are not, therefore, additional responsibilities and leadership roles as defined in this notice.

For these reasons, we propose to clarify the circumstances under which TIF funds can be used to support compensation for educators in high-need schools. TIF funds can only be used to support compensation for educators in high-need schools as part of an LEA's PBCS, as described in the application.

We also request public comment on whether this requirement should limit the amount of TIF funds that can be used to compensate effective teachers or principals who agree to take on additional responsibilities and leadership roles in high-need schools.

As discussed under Proposed Requirement 1, we are proposing that a grantee must provide performance-based compensation to effective teachers who agree to take on additional responsibilities and leadership roles in high-need schools. These teachers could be school-based instructional leaders in career ladder positions (such as master teacher or academic instructional coach positions) or they could be teachers who take on additional responsibilities and leadership roles, such as, for example, conducting peer evaluations. In addition, under proposed Requirement 1, a grantee may choose, at its discretion, to provide performance-based compensation to principals who take on additional responsibilities and leadership roles.

Given the limited amount of TIF funding that will be available for new awards, we specifically request comment on what limitations, if any, the Department should establish on the amount of TIF funds that a grantee could use to support the costs of teachers and principals taking on these additional responsibilities and leadership roles including, career ladder positions. For example:

- Should a grantee be able to use TIF funds for the entire amount of salary for career ladder positions, or should TIF funds only pay for a salary augmentation (i.e., an additional amount of compensation over and above what the LEA would otherwise pay the effective teacher)?
- Should there be a limit on the number of effective teachers or

principals who take on additional responsibilities and leadership roles under the PBCS for whom TIF would support the salary or salary augmentation costs?

When finalizing this requirement, we will take into consideration the public comments we receive regarding limitations on the use of TIF funds for the costs of salaries for those effective teachers and principals who take on additional responsibilities and leadership roles in high-need schools.

Requirement: TIF funds may be used to develop and improve systems and tools that support the PBCS and benefit the entire LEA. TIF funds may also be used to provide performance-based compensation and professional development in high-need schools. TIF funds may not be used to provide performance-based compensation or professional development in schools that are not high-need schools.

TIF funds may be used to compensate educators only when the compensation is provided as part of the LEA's PBCS, as described in the application.

This requirement does not preclude the use of TIF funds to compensate educators who are hired by a grantee to administer or implement the TIF-supported PBCS, or to develop or improve systems and tools needed to support the PBCS.

Proposed Requirement 7—Limitation on Using TIF Funds in High-Need Schools Served by Existing TIF Grants

Background: Through this proposed requirement, we would prohibit a grantee from using TIF funds for performance-based compensation and evaluation-linked professional development in high-need schools that, as of the beginning of the grant's project period, are already being served (or are to be served) by a TIF grant. We propose this requirement because we believe that the projects currently funded under the TIF program should successfully complete the activities described in their existing approved applications.

Requirement: Each applicant must provide an assurance, in its application, that, if successful under this competition, it will use the grant award to implement the proposed PBCS and professional development only in high-need schools that are not served, as of the beginning of the grant's project period or as planned in the future, by an existing TIF grant.

Proposed Definitions

Background

We propose the following definitions of the terms *additional responsibilities and leadership roles, career ladder positions, educators, high-need school, human capital management system, other personnel, performance-based compensation system, principal, student growth, teacher,* and *vision of instructional improvement* for use in the TIF program.

Two of the terms proposed to be defined here—*high-need school* and *student growth*—are virtually the same as the definitions we adopted for these terms in the FY 2010 TIF notice of final priorities, requirements, definitions and selection criteria. The *student growth* definition is also substantively identical to the definition of that term used in the ESEA Flexibility initiative (see *http://www.ed.gov/esea/flexibility*). We are defining these terms as we did in other Department programs for consistency and to avoid confusion.

We also are proposing to define some terms that were used but not defined in our FY 2010 TIF notice of final priorities, requirements, definitions and selection criteria, and some new terms used for the first time in this notice, because a clear definition for each of these terms will avoid confusion among applicants regarding the types of projects that we intend to fund under these proposed priorities, requirements, definitions, and selection criteria.

The proposed definition of a *performance-based compensation system* (PBCS) clarifies that any performance-based compensation must be based on the evaluation systems described in the application, rather than on evaluation criteria established for the PBCS alone. This definition also clarifies that a PBCS must compensate educators who are deemed effective (while also compensating effective teachers who take on additional responsibilities and leadership roles) or it must compensate teachers who are deemed effective and take on career ladder positions (while also compensating principals who are deemed effective). Under the proposed definition, a grantee has discretion to award compensation in other specified circumstances.

We define the term *additional responsibilities and leadership roles* differently for teachers, on the one hand, and principals, on the other. For teachers, we define the term to ensure that TIF funds are used to support activities that are likely to improve instruction or instructional leadership in a systemic way. While the term is broadly-defined for principals, the related definition of PBCS clarifies that additional compensation for effective principals who take on additional responsibilities and leadership roles is an optional component of any PBCS. Similarly, the *PBCS* definition clarifies that educators who take on additional responsibilities and leadership roles (including career ladder positions) would first have to demonstrate their effectiveness under the evaluation systems described in the application.

The definition of *human capital management system (HCMS)* recognizes that an HCMS is a system in which an LEA makes decisions regarding its workforce. This proposed definition is based on the premise that all LEAs have some sort of system they use to make human capital management decisions. While the characteristics or structure of an HCMS can vary dramatically across LEAs, we view human capital management decision-making as part of a system.

Similarly, we define *vision of instructional improvement* to mean an LEA's summary of the competencies and behaviors required for effective teaching, as well as how educators acquire or improve these competencies and behaviors. The proposed definition is intended to help applicants and grantees base their TIF-funded projects on a deep understanding of effective teaching.

Finally, we propose to define the terms *educators, other personnel, principal,* and *teacher* in an effort to clarify the distinctions among these roles.

Definitions

We propose the following definitions for this program. We may apply one or more of these definitions in any year in which this program is in effect.

Additional responsibilities and leadership roles means:

(a) In the case of teachers, meaningful school-based responsibilities that teachers may voluntarily accept to strengthen instruction or instructional leadership in a systemic way, such as additional responsibilities related to lesson study, professional development, and peer evaluation, and may also include career ladder positions.

(b) In the case of principals, additional responsibilities and leadership roles that principals may voluntarily accept, such as a position in which an effective principal coaches a novice principal.

Career ladder positions means school-based instructional leadership positions designed to improve instructional practice, which teachers may voluntarily accept, such as positions described as master teacher, mentor teacher, demonstration or model teacher, or instructional coach, and for which teachers are selected based on

criteria that are predictive of the ability to lead other teachers.

Educators means teachers and principals.

High-need school means:

(a) A high-poverty school, or

(b) A persistently lowest-achieving school, or

(c) In the case of States that have received the Department's approval of a request for ESEA flexibility, a priority school.

High-poverty school means a school with 50 percent or more of its enrollment from low-income families, based on eligibility for free or reduced-price lunch subsidies under the Richard B. Russell National School Lunch Act, or other poverty measures that LEAs use (see section 1113(a)(5) of the ESEA (20 U.S.C. 6313(a)(5)). For middle and high schools, eligibility may be calculated on the basis of comparable data from feeder schools. Eligibility as a high-poverty school under this definition is determined on the basis of the most currently available data.

A *human capital management system (HCMS)* is a system by which an LEA makes and implements human capital decisions, such as decisions on recruitment, hiring, placement, retention, dismissal, compensation, professional development, tenure, and promotion.

Other personnel are school-based personnel who are not serving in a teacher or principal position. Other personnel may include, for example, school counselors, media specialists, or para-educators.

Persistently lowest-achieving school means, as determined by the State:

(i) Any Title I school in improvement, corrective action, or restructuring that—

(a) Is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or

(b) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and

(ii) Any secondary school that is eligible for, but does not receive, Title I funds that—

(a) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or

(b) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

To identify the persistently lowest-achieving schools, a State must take into account both:

(i) The academic achievement of the ''all students'' group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and

(ii) The school's lack of progress on those assessments over a number of years in the ''all students'' group.

Performance-based compensation system (PBCS) means a system that—

(a) Provides additional compensation for teachers and principals in one of the following circumstances—

(1)(i) Design Model 1. Additional compensation for teachers and principals who receive an overall evaluation rating of effective or higher under the evaluation systems described in the application; and

(ii) Of those teachers and principals eligible for compensation under paragraph (a)(1)(i) of this definition, additional compensation for teachers and, at the applicant's discretion, for principals, who take on additional responsibilities and leadership roles; or

(2)(i) Design Model 2. Additional compensation for teachers who receive an overall evaluation rating of effective or higher under the evaluation system described in the application and who take on career ladder positions; and

(ii) Additional compensation for (A) principals who receive an overall evaluation rating of effective or higher under the evaluation system described in the application, or (B) principals who receive an overall evaluation rating of effective or higher under the evaluation system described in the application and who take on additional responsibilities and leadership roles.

(b) May provide the following compensation:

(1) Compensation for educators (which at the applicant's option may be for teachers or principals or both) who receive an overall evaluation rating of effective or higher under the evaluation systems described in the application or under comparable evaluation systems in another LEA, and who either: (i) transfer to a high-need school from a school of the LEA that is not high-need, or, (ii) for educators who previously worked in another LEA, are hired to work in a high-need school.

(2) Compensation for other personnel, who are not teachers or principals, based on performance standards established by the LEA so long as those standards, in significant part, include student growth, which may be school-level student growth.

A *principal* is any person who meets the definition of that term under State or local law. At an LEA's discretion, it may also include an assistant or vice principal or a person in a position that contributes to the organizational management or instructional leadership of a school.

Priority school means a school that has been identified by the State as a priority school pursuant to the State's approved request for Elementary and Secondary Education Act (ESEA) flexibility.

Student growth means the change in student achievement for an individual student between two or more points in time. For the purpose of this definition, student achievement means—

(a) For grades and subjects in which assessments are required under section 1111(b)(3) of ESEA: (1) a student's score on such assessments and may include (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided those measures are rigorous and comparable across schools within an LEA.

(b) For grades and subjects in which assessments are not required under section 1111(b)(3) of ESEA: Alternative measures of student learning and performance such as student results on pre-tests, end-of-course tests, and objective performance-based assessments; student learning objectives; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools within an LEA.

A *teacher* is any person who meets the definition of that term under State or local law.

A *vision of instructional improvement* is a summary of the key competencies and behaviors of effective teaching that an LEA views as necessary to produce high levels of student achievement, as well as how educators acquire or improve these competencies and behaviors.

Proposed Selection Criteria

This notice contains two sets of proposed selection criteria. The first set proposes selection criteria that would be used, in whole or in part, in any year in which we conduct a General TIF Competition. The second set would be used, in whole or in part, together with one or more of the General TIF Competition selection criteria, in any year in which we conduct a TIF Competition with a Focus on STEM. For FY 2012, the Department intends to

conduct two competitions—a General TIF Competition and a TIF Competition with a Focus on STEM.

Background

General TIF Competition Selection Criteria: We propose the General TIF Competition Selection Criteria (proposed selection criteria (a) through (f)) to be used to review an applicant's proposal for funding under any FY 2012 competition and any future competitions. We believe that these proposed selection criteria would be helpful in ensuring that an applicant selected for funding has or will have: (1) An HCMS that enhances the quality and sustainability of its PBCS and advances an LEA's vision of instructional improvement; (2) a well-designed PBCS that uses reliable teacher and principal evaluations to identify, compensate, and promote effective staff in high-need schools; (3) a professional development plan to help all educators in high-need schools that are part of the PBCS become effective; (4) extensive teacher and principal involvement in the development and implementation of the proposed educator evaluation systems and PBCS; (5) a management plan (including a plan for an effective project evaluation) that is adequate to support the development and implementation of the proposed project; and (6) a sustainability plan to ensure the longer-term viability of the proposed project.

TIF Competition With a Focus on STEM Selection Criteria

We propose an additional selection criterion, selection criterion (g), that would be used, in whole or in part, in addition to one or more of the General TIF Competition selection criteria for any TIF Competition with a Focus on STEM the Department conducts. This selection criterion focuses on comprehensive approaches to improving STEM instruction.

Proposed Selection Criteria

We propose the following selection criteria for evaluating an application under this program. We may apply one or more of these criteria; the general selection criteria in the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.210; criteria based on statutory provisions in accordance with 34 CFR 75.209; or any combination thereof in any year in which there is a TIF competition. In the notice inviting applications, or the application package, or both, we will announce the maximum possible points assigned to each criterion.

(a) *A Coherent and Comprehensive Human Capital Management System (HCMS).* We will consider the quality and comprehensiveness of each participating LEA's HCMS as described in the application. In determining the quality of the HCMS, as it currently exists and as the applicant proposes to modify it during the grant period, we will consider the extent to which the HCMS described in the application is—

(1) Aligned with each participating LEA's clearly described vision of instructional improvement; and

(2) Likely to increase the number of effective educators in the LEA's schools, especially in high-need schools, as demonstrated by—

(i) The weight given to educator effectiveness—based on the educator evaluation systems described in the application—when human capital decisions are made;

(ii) The range of human capital decisions for which the applicant proposes to factor in educator effectiveness—based on the educator evaluation systems described in the application.

(iii) The feasibility of the HCMS described in the application, including the extent to which the LEA has prior experience using information from the educator evaluation systems described in the application to inform human capital decisions;

(iv) The commitment of the LEA leadership to implementing the described HCMS, including all of its component parts; and

(v) The adequacy of the financial and nonfinancial strategies and incentives, including the proposed PBCS, for attracting effective educators to work in high-need schools and retaining them in those schools.

(b) *Rigorous, Valid, and Reliable Educator Evaluation Systems.* We will consider, for each participating LEA, the quality of the educator evaluation systems described in the application. In determining the quality of each evaluation system, we will consider the extent to which—

(1) Each participating LEA has finalized a high-quality evaluation rubric, with at least three performance levels (e.g., highly effective, effective, developing, unsatisfactory), under which educators will be evaluated;

(2) Each participating LEA has presented:

(i) A clear rationale to support its approach to differentiating performance levels based on the level of student growth achieved; and

(ii) Evidence, such as current research and best practices, supporting the LEA's choice of student growth model or models;

(3) Each participating LEA has made substantial progress in developing a high-quality plan for multiple teacher and principal observations, including identification of the persons, by position and qualifications, who will be conducting the observations, the observation tool, the events to be observed, the accuracy of raters in using observation tools and the procedures for ensuring a high degree of inter-rater reliability;

(4) The participating LEA has experience measuring student growth at the classroom level, and has already implemented components of the proposed educator evaluation systems;

(5) In the case of teacher evaluations, the proposed evaluation system—

(i) Bases the overall evaluation rating for teachers, in significant part, on student growth;

(ii) Evaluates the practice of teachers, including general education teachers and teachers of special student populations, in meeting the needs of special student populations, including students with disabilities and English learners;

(6) In the case of principal evaluations, the proposed evaluation system—

(i) Bases the overall evaluation rating on, in significant part, student growth; and

(ii) Evaluates, among other factors, a principal's practice in—

(A) Focusing every teacher, and the school community generally, on student growth;

(B) Establishing a collaborative school culture focused on continuous improvement; and

(C) Supporting the academic needs of special student populations, including students with disabilities and English learners, for example, by creating systems to support successful co-teaching practices, providing resources for research-based intervention services, or similar activities.

(c) *Professional Development Systems to Support the Needs of Teachers and Principals Identified Through the Evaluation Process.* We will consider the extent to which each participating LEA has a high-quality plan for professional development to help all educators in high-need schools served by the PBCS improve their effectiveness. In determining the quality of this plan for professional development, we will consider the extent to which each participating LEA describes a high-quality plan to—

(1) Use the disaggregated information generated by the proposed educator evaluation systems to identify the

professional development needs of individual educators and schools;

(2) Provide professional development in a timely way; and

(3) Provide professional development that is likely to improve instructional and leadership practices, and is guided by the professional development needs of individual educators as identified in (1).

(d) *Involvement of Educators.* We will consider the quality of educator involvement in the development and implementation of the proposed PBCS and educator evaluation systems described in the application. In determining the quality of such involvement, we will consider the extent to which—

(1) The application contains evidence that educator involvement in the design of the PBCS and the educator evaluation systems has been extensive and will continue to be extensive during the grant period; and

(2) The application contains evidence that educators support the elements of the proposed PBCS and the educator evaluation systems described in the application.

(e) *Project Management.* We will consider the quality of the management plan of the proposed project. In determining the quality of the management plan, we will consider the extent to which the management plan—

(1) Clearly identifies and defines the roles and responsibilities of key personnel;

(2) Allocates sufficient human resources to complete project tasks;

(3) Includes measurable project objectives and performance measures; and

(4) Includes an effective project evaluation plan;

(5) Specifies realistic and achievable timelines for:

(i) Implementing the components of the HCMS, PBCS, and educator evaluation systems, including any proposal to phase in schools or educators.

(ii) Successfully completing project tasks and achieving objectives.

(f) *Sustainability.* We will consider the quality of the plan to sustain the proposed project. In determining the quality of the sustainability plan, we will consider the extent to which the sustainability plan—

(1) Identifies and commits sufficient non-TIF resources, financial and non-financial, to support the PBCS and educator evaluation systems during and after the grant period; and

(2) Is likely to be implemented and, if implemented, will result in a sustained PBCS and educator evaluation systems after the grant period ends.

(g) *Comprehensive Approach to Improving STEM Instruction.* To meet Priority 3, we will consider the quality of an applicant's plan for improving educator effectiveness in STEM instruction. In determining the quality of the plan, we will consider the extent to which—

(1) The financial and nonfinancial strategies and incentives, including the proposed PBCS, are adequate for attracting effective STEM educators to work in high-need schools and retaining them in these schools;

(2) The proposed professional development opportunities—

(a) Will provide college-level STEM skills and content knowledge to STEM teachers while modeling for teachers pedagogical methods for teaching those skills and that content at the appropriate grade level; and

(b) Will enable STEM teachers to provide students in high-need schools with increased access to rigorous and engaging STEM coursework appropriate for their grade level, including college-level material in high schools;

(3) The applicant will significantly leverage STEM-related funds across other Federal, State, and local programs to implement a high-quality and comprehensive STEM plan; and

(4) The applicant provides evidence (e.g., letters of support) that the LEA has or will develop extensive relationships with STEM experts and resources in industry, academic institutions, or associations to effectively implement its STEM plan and ensure that instruction prepares students to be college-and-career ready.

Final Priorities, Requirements, Definition, and Selection Criteria

The Secretary will announce the final priorities, requirements, definitions, and selection criteria in a notice in the **Federal Register**. The Secretary will determine the final priorities, requirements, definition, and selection criteria 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 these proposed priorities, requirements, definition, and selection criteria, we invite applications through a notice in the **Federal Register**.

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 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 set forth in the Executive Order.

This regulatory will have an annual effect on the economy of more than $100 million because the amount of government transfers provided through the TIF program will exceed that amount. Therefore, this action is ''economically significant'' and subject to OMB review under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, we have assessed the potential costs and benefits—both quantitative and qualitative—of this regulatory action and have determined that the benefits justify the costs.

We have also reviewed these proposed priorities, requirements, definitions, and selection criteria 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 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 proposing the priorities, requirements, definitions, and selection criteria in this notice only on a reasoned determination that their benefits justify their 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 proposed priorities, requirements, definitions, and selection criteria are consistent with the principles in Executive Order 13563.

In this regulatory impact analysis we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered.

Need for Federal Regulatory Action

The proposed priorities, requirements, definitions, and selection criteria are needed to implement the TIF program. The Secretary does not believe that the authorizing legislation for this program, by itself, provides a sufficient level of detail to ensure that the program achieves the greatest national impact in promoting the development and implementation of PBCSs. The authorizing and appropriations language is very brief and provides only broad parameters to govern the program. The priorities, requirements, definitions, and selection criteria proposed in this notice would clarify the types of activities the Department seeks to fund, and permit the Department to evaluate proposed projects using selection criteria that are based on the purpose of the program and are closely aligned with the Secretary's priorities.

In the absence of specific selection criteria for the TIF program, the Department would use the general selection criteria in 34 CFR 75.210 of the Education Department General Administrative Regulations in selecting grant recipients. However, the Secretary does not believe the use of those general criteria would be appropriate for a TIF program competition because they do not focus on the development of PBCSs or activities most likely to increase the quality of teaching and school administration and improve educational outcomes for students.

Regulatory Alternatives Considered

The Department considered a variety of possible priorities, requirements, definitions, and selection criteria before deciding to propose those included in this notice. For example, the Department considered—

(1) Limiting eligible LEA applicants to those that already have in place the basic infrastructure necessary to generate student growth data at the classroom level. However, we took an alternative approach because we recognize that one purpose of the TIF program is to nurture innovation and reform in LEAs that may be beginning their reform efforts in this area.

(2) Requiring an applicant to commit a certain percentage of non-TIF funds to the project in order to help ensure the project's sustainability after the grant period. However, we took an alternative approach that requires the PBCS to be part of an LEA-wide HCMS because we believe that having the PBCS implemented as part of an LEA-wide HCMS will help generate project sustainability. Further, we believe that the proposed selection criteria that direct reviewers to assess the degree of LEA commitment, both financial and non-financial, and its effect on project sustainability, will be sufficient to ensure that funded projects are sustained after the end of the grant period.

The proposed priorities, requirements, definitions, and selection criteria reflect and promote the purpose of the TIF program. They also align TIF, where possible and permissible, with other Presidential and Departmental priorities, such as the State Fiscal Stabilization Fund, the Race to the Top Fund, the School Improvement Grants program, and the ESEA Flexibility initiative. The proposals would also provide an eligible applicant with a great deal of flexibility in designing the systems and selecting the activities to carry out its proposed project. The Secretary believes that the proposals in this notice appropriately balance the need for specific programmatic guidance while providing each applicant with flexibility to design innovative and enduring PBCSs. We seek public comment on whether we have achieved an acceptable balance.

Summary of Costs and Benefits

The Secretary believes that the proposed priorities, requirements, definitions, and selection criteria would not impose significant costs on eligible States, LEAs, or nonprofit organizations that would receive assistance through the TIF program. The Secretary also believes that the benefits of implementing the proposals contained in this notice justify any associated costs.

The Secretary believes that the proposed priorities, requirements, definitions, and selection criteria would result in selection of high-quality applications to implement activities that will improve the quality of teaching and educational administration. Through the regulatory action proposed in this notice, the Secretary seeks to clarify the scope of activities he expects to support with program funds and the expected burden to prepare an application and implement a project under the program. A potential applicant must consider carefully the resources needed to prepare a strong application and the applicant's capacity to implement a successful project.

The Secretary believes that the costs of complying with the proposed priorities, requirements, definitions, and selection criteria would be largely limited to the paperwork burden of preparing an application and that the benefits of implementing these proposals would outweigh any costs incurred by the applicant. This is because, during the project period, the applicant would pay the costs of actually carrying out activities under a TIF grant with program funds and any matching funds. Further, many of the systems that TIF funds will support, including educator evaluation systems and systems of professional development, are ones that LEAs regularly support with their own funds. Thus, the costs of implementing a TIF project using these proposed priorities, requirements, definitions, and selection criteria would be minimized for any eligible applicant, including a small entity.

Elsewhere in this section under *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whithouse.gov/omb/Circulars/a004/a-4.pdf*), in the following table, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed regulatory action. This table provides our best estimate of the Federal payments to be made to States, LEAs, and nonprofit organizations under this program as a result of this proposed regulatory action. This table is based on funds available for new awards under the FY 2012 appropriation. Expenditures are classified as transfers to States, LEAs, and nonprofit organizations.

Accounting Statement Classification of Estimated Expenditures:

Category	Transfers (in millions)
Annual Monetized Transfers.	$284.5
From Whom to Whom	Federal Government to States, LEAs, and nonprofits.

Effect on Other Levels of Government

We have also determined that this regulatory action would not unduly interfere with State, local, or tribal governments in the exercise of their governmental functions.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

We estimate that each applicant would spend approximately 248 hours of staff time to address the proposed priorities, requirements, definitions, and selection criteria, prepare the application, and obtain necessary clearances. Based on the number of applications the Department received in the FY 2010 competition, we expect to receive approximately 120 applications for these funds. The total number of hours for all expected applicants is an estimated 29,760 hours. We estimate the total cost per hour of the applicant-level staff who carry out this work to be $30 per hour. The total estimated cost for all applicants would be $892,800.

We have submitted an Information Collection Request (ICR) for this collection to OMB. If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by email to *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. You may also send a copy of these comments to the Department contact named in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

In preparing your comments you may want to review the ICR, which we maintain in the Education Department Information Collection System (EDICS) at *http://edicsweb.ed.gov.* Click on Browse Pending Collections. This proposed collection is identified as proposed collection 1810–0700. This ICR is also available on OMB's RegInfo Web site at *www.reginfo.gov.*

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

OMB is required to make a decision concerning the collection of information contained in these proposed priorities, requirements, and selection criteria between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments on the proposed collection within 30 days after publication. This does not affect the deadline for your comments to us on the proposed priorities, requirements, and selection criteria.

Please note that a Federal agency cannot conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number. We will provide the OMB control number when we publish the notice of final priorities, requirements, definitions, and selection criteria.

Regulatory Flexibility Act Certification

The Secretary certifies that this proposed regulatory action will not have a significant economic impact on a substantial number of small entities. The small entities that this proposed regulatory action may affect are (1) small LEAs, and (2) nonprofit organizations applying for and receiving funds under this program in partnership with an LEA or SEA. The Secretary believes that the costs imposed on an applicant by the proposed priorities, requirements, definitions, and selection criteria would be limited to paperwork burden related to preparing an application and that the benefits of implementing these proposals would outweigh any costs incurred by the applicant.

Participation in the TIF program is voluntary. For this reason, the proposed priorities, requirements, definitions, and selection criteria would impose no burden on small entities unless they applied for funding under a TIF program using the priorities, requirements, definitions and selection criteria proposed in this notice. We expect that in determining whether to apply for TIF funds, an eligible entity would evaluate the costs of preparing an application and implementing a TIF project and weigh them against the benefits likely of implementing the TIF project. An eligible entity would probably apply only if it determines that the likely benefits exceed the costs of preparing an application and implementing a project. The likely benefits of applying for a TIF program grant include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the use of its TIF application to spur development and implementation of PBCSs without Federal funding through the TIF program.

The U.S. Small Business Administration (SBA) Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual

revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000. The Urban Institute's National Center for Charitable Statistics reported that of 173,172 nonprofit organizations that had an educational mission and reported revenue to the Internal Revenue Service (IRS) by December 2011, 168,669 (over 97 percent) had revenues of less than $5 million. In addition, there are 12,358 LEAs in the country that meet the SBA's definition of small entity. While these entities are eligible to apply for funding under the TIF program, the Secretary believes that only a small number of them will apply. In the FY 2010 TIF competition, approximately 23 nonprofit organizations applied for funding in partnership with an LEA or SEA, and few of these organizations appeared to be a small entity. The Secretary has no reason to believe that a future competition under this program would be different. To the contrary, we expect that the FY 2012 competition will be similar to the FY 2010 competition because only a limited number of nonprofit organizations are working actively on the development of PBCSs and many of these organizations are larger organizations. Thus, the likelihood that the priorities, requirements, definitions, and selection criteria proposed in this notice would have a significant economic impact on small entities is minimal.

In addition, the Secretary believes that the priorities, requirements, definitions, and selection criteria proposed in this notice do not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the proposed regulatory action and the time needed to prepare an application would be comparable if the competition relied exclusively on the selection criteria in 34 CFR 75.210 for this competition.

Further, this proposed regulatory action may help a small entity determine whether it has the interest, need, or capacity to implement activities under the program and, thus, prevent a small entity that does not have such an interest, need, or capacity from absorbing the burden of applying.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program and with any matching funds provided by private-sector partners.

The Secretary invites comments from small nonprofit organizations and small LEAs as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, requests evidence to support that belief.

Intergovernmental Review

This program is subject to the requirements of 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** is available via the Federal Digital System at *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: February 24, 2012.

Michael Yudin,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2012–4832 Filed 2–28–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Public Availability of Department of Energy FY 2011 Service Contract Inventory

AGENCY: Department of Energy.

ACTION: Notice of Public Availability of FY 2011 Service Contract Inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), the Department of Energy (DOE) is publishing this notice to advise the public of the availability of the FY 2011 Service Contract inventory. This inventory provides information on service contract actions over $25,000 that were made in FY 2011. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.* On December 19, 2011, OFPP issued additional guidance available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventory-guidance.pdf.*

Except for minor changes to reporting deadlines, the guidance for preparing and analyzing FY 2011 inventories is essentially unchanged from OFPP's November 5, 2010 guidance for preparing the FY 2010 inventory. DOE has posted its inventory and a summary of the inventory at: *http://energy.gov/management/downloads/service-contract-inventory.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Jeff Davis in the Strategic Programs Division at 202–287–1877 or *jeff.davis@hq.doe.gov.*

Dated: February 13, 2012.

Paul Bosco,

Director, Office of Procurement and Assistance Management.

[FR Doc. 2012–4811 Filed 2–28–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 11–98–LNG, 11–155–NG, 12–03–NG, et al.]

Orders Granting Authority To Import and Export Natural Gas and Liquefied Natural Gas During January 2012

AGENCY: Office of Fossil Energy, Department of Energy (DOE).

ACTION: Notice of orders.

	FE Docket Nos.
DOMINION COVE POINT LNG, LP	11–98–LNG
ENERGY PLUS NATURAL GAS LLC	11–155–NG
BROOKFIELD ENERGY MARKETING L.P.	12–03–NG
WPX ENERGY MARKETING, LLC	11–157–NG
CAMERON LNG, LLC	11–145–LNG
CANNAT ENERGY INC.	11–158–NG
BG LNG SERVICES, LLC	12–04–LNG
MICHIGAN CONSOLIDATED GAS COMPANY	12–02–NG
ENERGY SOURCE CANADA INC.	12–01–NG
SACRAMENTO MUNICIPAL UTILITY DISTRICT	12–07–NG
CENTRAL LOMAS DE REAL, S.A. DE C.V.	12–08–NG

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during January 2012, it issued Orders granting authority to import and export natural gas and liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fossil.energy.gov/programs/gasregulation/authorizations/Orders-2012.html.* They are also available for inspection and copying in the Office of Fossil Energy, Office of Natural Gas Regulatory Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on February 22, 2012.

John A. Anderson,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

Appendix

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

Order No.	Date issued	FE Docket No.	Authorization holder	Description of action
3055	01/09/11	11–98–LNG	Dominion Cove Point LNG, LP.	Order granting blanket authority to export previously imported LNG by vessel.
3056	01/10/12	11–155–NG	Energy Plus Natural Gas LLC.	Order granting blanket authority to import natural gas from Canada.
3057	01/10/12	12–03–NG	Brookfield Energy Marketing L.P.	Order granting blanket authority to import/export natural gas from/to Canada.
3058	01/13/12	11–157–NG	WPX Energy Marketing, LLC.	Order granting blanket authority to import/export natural gas from/to Canada, to import LNG from various sources by vessel, to import LNG from Canada by truck, to export LNG to Canada by vessel/truck, and vacating prior authorization.
3059	01/17/12	11–145–LNG	Cameron LNG, LLC	Order granting long-term multi-contract authority to export LNG by vessel from Cameron LNG Terminal to free trade agreement nations.
3060	01/20/12	11–158–NG	CanNat Energy Inc	Order granting blanket authority to import natural gas from Canada.
3061	01/20/12	12–04–LNG	BG LNG Services, LLC	Order granting blanket authority to import LNG from various sources by vessel.
3062	01/25/12	12–02–NG	Michigan Consolidated Gas Company.	Order granting blanket authority to export natural gas to Canada.
3063	01/23/12	12–01–NG	Energy Source Canada Inc.	Order granting blanket authority to import/export natural gas from/to Canada.
3064	01/25/12	12–07–NG	Sacramento Municipal Utility District.	Order granting blanket authority to import natural gas from Canada.
3065	01/27/12	12–08–NG	Central Lomas de Real, S.A. de C.V.	Order granting blanket authority to import/export natural gas from/to Canada.

[FR Doc. 2012–4818 Filed 2–28–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2467–020]

Pacific Gas and Electric Company; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. *Project No.:* 2467–020.

c. *Date Filed:* February 8, 2012.

d. *Applicant:* Pacific Gas and Electric Company (PG&E).

e. *Name of Project:* Merced Falls Hydroelectric Project.

f. *Location:* The existing project is located on the Merced River on the border of Merced and Mariposa counties, California, immediately downstream of the Merced River Hydroelectric Project (No. 2179), operated by the Merced Irrigation District (MID). The project would occupy 1.62 acres of federal land managed by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Pacific Gas and Electric Company, Power Generation, P.O. Box 770000, MC N11C, San Francisco, CA 94177–0001; Telephone (415) 973–7000.

i. *FERC Contact:* Matt Buhyoff, (202) 502–6824 or *matt.buhyoff@ferc.gov*.

j. This application is not ready for environmental analysis at this time.

k. *The Project Description:*

The existing Merced Falls Hydroelectric Project consists of: (1) A concrete gravity dam with a structural height of 34 feet, and a crest length of 575 feet; (2) three radial gates, each 20 feet in length and 13.5 feet high; (3) a 1-mile-long project impoundment with approximately 900 acre-feet of storage capacity, a useable storage capacity of approximately 579 acre-feet, a total surface area of approximately 65 acres, and a normal impoundment elevation of 344 feet above mean sea level; (4) powerhouse facilities consisting of a steel building housing a 3.4-megawatt (MW) turbine/generator unit and a vertical Kaplan-type four-blade turbine; (5) a 1,000-foot-long earthen levee with a crest width of 8 feet; (6) an adjacent intake structure with a debris rack; and (7) a non-operable fish ladder.

The Merced Falls Project is operated in a run-of-river mode dependent on water outflow from MID's upstream Merced River Project (FERC No. 2179). Inflow to the project passes through the impoundment, which is kept at a constant water elevation and then either through the powerhouse or the dam's radial gates. Flows of up to approximately 1,750 cubic feet per second (cfs) are diverted through the powerhouse, and then discharged to the Merced River via the tailrace. When water inflows exceed 2,200 cfs, the project spills water through the radial gates. During flood events with flows greater than 12,250 cfs, the needle beams can be dropped, allowing the 575-foot-long concrete section of the dam to act as a spillway.

The project has a dependable capacity of 1.7 MW and an annual average generation of approximately 13.5 gigawatt-hours. PG&E is not proposing any new or upgraded facilities or structural changes to the project. PG&E proposes to modify the project boundary by removing approximately 4.8 acres of licensee-owned lands, which PG&E indicates are not needed for project purposes.

l. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate:

Milestone	Target date
Notice of Acceptance/Notice of Ready for Environmental Analysis (*when FERC approved studies are complete*)	November 2013.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	January 2014.
Commission issues Draft EA or EIS	July 2014.
Comments on Draft EA or EIS	August 2014.
Modified Terms and Conditions	November 2014.
Commission Issues Final EA or EIS	February 2015.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: February 22, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–4775 Filed 2–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–387–000.

Applicants: Dominion Transmission, Inc.

Description: DTI—February 17, 2012 Form of Service Agreement Revision to be effective 3/19/2012.

Filed Date: 2/17/12.

Accession Number: 20120217–5100.

Comments Due: 5 p.m. ET 2/29/12.

Docket Numbers: RP12–388–000.

Applicants: Columbia Gas Transmission, LLC.

Description: TCO Prearranged Deal to be effective 3/21/2012.

Filed Date: 2/21/12.

Accession Number: 20120221–5129.

Comments Due: 5 p.m. ET 3/5/12.

Docket Numbers: RP12–389–000.

Applicants: Kinder Morgan Illinois Pipeline LLC.

Description: Penalty Revenue Crediting Report of Kinder Morgan Illinois Pipeline LLC.

Filed Date: 2/21/12.

Accession Number: 20120221–5177.

Comments Due: 5 p.m. ET 3/5/12.

Docket Numbers: RP12–390–000.

Applicants: Columbia Gas Transmission, LLC.

Description: TCO Operational Transaction Filing to be effective N/A.

Filed Date: 2/21/12.

Accession Number: 20120221–5214.

Comments Due: 5 p.m. ET 3/5/12.

Docket Numbers: RP12–391–000.

Applicants: Columbia Gulf Transmission Company.

Description: CGT Operational Transaction Filing to be effective N/A.

Filed Date: 2/21/12.

Accession Number: 20120221–5217.

Comments Due: 5 p.m. ET 3/5/12.

Docket Numbers: RP12–392–000.

Applicants: Hardy Storage Company, LLC.

Description: Hardy Operational Transaction Filing to be effective N/A.

Filed Date: 2/21/12.

Accession Number: 20120221–5218.

Comments Due: 5 p.m. ET 3/5/12.

Docket Numbers: RP12–393–000.

Applicants: Crossroads Pipeline Company.

Description: Operational Purchases and Sales to be effective N/A.

Filed Date: 2/21/12.

Accession Number: 20120221–5220.

Comments Due: 5 p.m. ET 3/5/12.

Docket Numbers: RP12–394–000.
Applicants: El Paso Natural Gas Company.
Description: Non-Conforming OPASA Filing to be effective 3/23/2012.
Filed Date: 2/21/12.
Accession Number: 20120221–5273.
Comments Due: 5 p.m. ET 3/5/12.

Docket Numbers: RP12–395–000.
Applicants: Ruby Pipeline, L.L.C.
Description: Non-Conforming Transportation Service Agreement to be effective 4/1/2012.
Filed Date: 2/22/12.
Accession Number: 20120222–5001.
Comments Due: 5 p.m. ET 3/5/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP11–1435–009.
Applicants: Columbia Gulf Transmission Company.
Description: Columbia Gulf Rate Case Second Compliance Filing to be effective 2/1/2012.
Filed Date: 2/21/12.
Accession Number: 20120221–5130.
Comments Due: 5 p.m. ET 3/5/12.

Docket Numbers: RP11–1521–002.
Applicants: Discovery Gas Transmission LLC.
Description: NAESB V1.9—4th Compliance to be effective 11/1/2010.
Filed Date: 2/21/12.
Accession Number: 20120221–5132.
Comments Due: 5 p.m. ET 3/5/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 22, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4795 Filed 2–28–12; 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 rate filings:

Docket Numbers: ER11–4070–003.
Applicants: RITELine Illinois, LLC, RITELine Indiana, LLC.
Description: RITELine IN 20120217 Errata to be effective 10/17/2011.
Filed Date: 2/17/12.
Accession Number: 20120217–5157.
Comments Due: 5 p.m. ET 3/9/12.

Docket Numbers: ER12–610–001.
Applicants: Shiloh III Lessee, LLC.
Description: Shiloh III Lessee MBR Compliance Filing to be effective 2/16/2012.
Filed Date: 2/17/12.
Accession Number: 20120217–5142.
Comments Due: 5 p.m. ET 3/9/12.

Docket Numbers: ER12–676–001.
Applicants: Perrin Ranch Wind, LLC.
Description: Perrin Ranch Wind, LLC Second Amendment to MBR Application to be effective 1/1/2012.
Filed Date: 2/17/12.
Accession Number: 20120217–5153.
Comments Due: 5 p.m. ET 3/9/12.

Docket Numbers: ER12–775–000.
Applicants: CPV Cimarron Renewable Energy Company, LLC.
Description: Supplemental Information with respect to CPV Cimarron Renewable Energy Company, LLC's MBR Application.
Filed Date: 2/9/12.
Accession Number: 20120209–5171.
Comments Due: 5 p.m. ET 2/24/12.

Docket Numbers: ER12–1116–000.
Applicants: Cleco Power LLC, Cleco Evangeline LLC.
Description: Joint Application of Cleco Power LLC and Cleco Evangeline LLC under section 205 of the Federal Power Act requesting authorization of a three-year power purchase agreement between the Applicants.
Filed Date: 2/16/12.
Accession Number: 20120217–0211.
Comments Due: 5 p.m. ET 3/8/12.

Docket Numbers: ER12–1121–000.
Applicants: IEP Power Marketing LLC.
Description: MBR Refile to be effective 2/20/2012.
Filed Date: 2/17/12.
Accession Number: 20120217–5133.
Comments Due: 5 p.m. ET 3/9/12.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF12–234–000.
Applicants: Chevron U.S.A. Inc.
Description: Chevron U.S.A. Inc. submits FERC Form 556—Notice of Certification of Qualifying Facility Status.
Filed Date: 2/16/12.
Accession Number: 20120216–5210.
Comments Due: None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 21, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4793 Filed 2–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–74–000.
Applicants: AES Red Oak, L.L.C.
Description: Section 203 Application of AES Red Oak, L.L.C.
Filed Date: 2/21/12.
Accession Number: 20120221–5215.
Comments Due: 5 p.m. ET 3/13/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3417–001; ER10–2895–004; ER11–2292–003; ER11–3942–002; ER11–2293–003; ER10–2917–004; ER11–2294–003; ER10–2918–005; ER12–199–003; ER10–2920–004; ER11–3941–002; ER10–2921–004; ER10–2922–004; ER10–3048–002; ER10–2966–004.
Applicants: Alta Wind VIII, LLC, Bear Swamp Power Company LLC, Brookfield Energy Marketing Inc., Brookfield Energy Marketing LP,

Brookfield Energy Marketing US LLC, Brookfield Power Piney & Deep Creek LLC, Brookfield Renewable Energy Marketing US LLC, Carr Street Generating Station, L.P., Coram California Development, L.P., Erie Boulevard Hydropower, L.P., Granite Reliable Power, LLC, Great Lakes Hydro America, LLC, Hawks Nest Hydro LLC, Longview Fibre Paper and Packaging, Inc., Rumford Falls Hydro LLC.

Description: Non-Material Change in Status of Alta Wind VIII, LLC, *et al.*

Filed Date: 2/21/12.

Accession Number: 20120221–5193.

Comments Due: 5 p.m. ET 3/13/12.

Docket Numbers: ER12–199–002.

Applicants: Coram California Development, L.P.

Description: Non-Material Change in Status of Coram California Development, L.P.

Filed Date: 2/17/12.

Accession Number: 20120217–5208.

Comments Due: 5 p.m. ET 3/9/12.

Docket Numbers: ER12–1016–001.

Applicants: Appalachian Power Company.

Description: 20120220 Att K and L Revisions Correction to be effective 3/2/2012.

Filed Date: 2/21/12.

Accession Number: 20120221–5131.

Comments Due: 5 p.m. ET 3/13/12.

Docket Numbers: ER12–1122–000.

Applicants: Southwestern Public Service Company.

Description: 2–20–12_RS135 SPS–GSEC RPSA to be effective 4/20/2012.

Filed Date: 2/21/12.

Accession Number: 20120221–5133.

Comments Due: 5 p.m. ET 3/13/12.

Docket Numbers: ER12–1123–000.

Applicants: ITC Midwest LLC.

Description: Filing of Certificates of Concurrence to be effective 4/23/2012.

Filed Date: 2/21/12.

Accession Number: 20120221–5066.

Comments Due: 5 p.m. ET 3/13/12.

Docket Numbers: ER12–1124–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Original Service Agreement No. 3205; Queue No. W4–011 to be effective 1/20/2012.

Filed Date: 2/21/12.

Accession Number: 20120221–5136.

Comments Due: 5 p.m. ET 3/13/12.

Docket Numbers: ER12–1125–000.

Applicants: Interstate Power and Light Company.

Description: IPL and FCW—LBA Agreement to be effective 9/24/2012.

Filed Date: 2/21/12.

Accession Number: 20120221–5138.

Comments Due: 5 p.m. ET 3/13/12.

Docket Numbers: ER12–1126–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Original Service Agreement No. 3206; Queue No. W4–014 to be effective 1/20/2012.

Filed Date: 2/21/12.

Accession Number: 20120221–5139.

Comments Due: 5 p.m. ET 3/13/12.

Docket Numbers: ER12–1127–000.

Applicants: Interstate Power and Light Company.

Description: IPL and FCW—CFC Agreement to be effective 9/24/2012.

Filed Date: 2/21/12.

Accession Number: 20120221–5142.

Comments Due: 5 p.m. ET 3/13/12.

Docket Numbers: ER12–1128–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM OA Section 11.3 re Member and Affiliate Information Updates to be effective 4/30/2012.

Filed Date: 2/21/12.

Accession Number: 20120221–5147.

Comments Due: 5 p.m. ET 3/13/12.

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: February 21, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4794 Filed 2–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the New York Independent System Operator, Inc. (NYISO):

Joint Inter-Regional Planning Task Force/Electric System Planning Working Group

February 27, 2012, 11 a.m.–4 p.m., Local Time.

Inter-Area Planning Stakeholder Advisory Subcommittee

March 30, 2012, 8:30 a.m.–12:30 p.m., Local Time (conference call only).

The above-referenced meetings will be held at: NYISO's offices, Rensselaer, NY.

The above-referenced meetings are open to stakeholders.

Further information may be found at *www.nyiso.com.*

The discussions at the meetings described above may address matters at issue in the following proceeding:

Docket No. ER08–1281, *New York Independent System Operator, Inc.*

For more information, contact James Eason, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8622 or *James.Eason@ferc.gov.*

Dated: February 22, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–4772 Filed 2–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ12–3–001]

City of Banning, CA; Notice of Compliance Filing

Take notice that on February 16, 2012, the City of Banning, CA (Banning) submitted a compliance filing with a revised version of Appendix I to Banning's Transmission Owner Tariff, Tariff Option A, setting forth the correct High Voltage Transmission Revenue Requirement (HVTRR), pursuant to the Federal Energy Regulatory Commission's (Commission) letter order issued February 1, 2012, in the above-referenced proceeding, by the Director, Division of Electric Power Regulation—West.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of

intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 8, 2012.

Dated: February 22, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–4774 Filed 2–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–18–000]

Questar Pipeline Company; Notice of Availability of the Environmental Assessment for the Proposed Mainline 103 Extension Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Mainline 103 Extension Project, proposed by Questar Pipeline Company (Questar) in the above-referenced docket. Questar requests authorization to extend its Mainline 103 to replace a segment of its Mainline 68 in Uintah County, Utah. The replacement is required to eliminate exposed pipeline sections caused by periodic flooding.

The EA assesses the potential environmental effects of the construction and operation of the Mainline 103 Extension Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Fish and Wildlife Service and U.S. Bureau of Indian Affairs (BIA) participated as cooperating agencies in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. The BIA will adopt and use the EA to consider the issuance of a right-of-way grant for the portions of the project within the boundaries of the Uintah and Ouray Indian Reservation.

The proposed Mainline 103 Extension Project includes the following facilities:

- Abandon 8.3 miles of 14-inch-diameter Mainline 68;
- Construct 8.5 miles of 20-inch-diameter Mainline 103; and
- Construct a pig launcher/receiver [1] at the new Mainline 103/68 junction.

The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding.

In addition, the EA is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before March 23, 2012.

For your convenience, there are three methods you can use to file your comments to the Commission. In all instances, please reference the project docket number (CP12–18–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[2] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (i.e., CP12–18). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free

[1] A pipeline ''pig'' is a device used to clean or inspect the pipeline. A pig launcher/receiver is an aboveground facility where pigs are inserted or retrieved from the pipeline.

[2] See the previous discussion on the methods for filing comments.

at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Dated: February 22, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–4770 Filed 2–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–95–001]

Enogex LLC; Notice of Filing

Take notice that on February 21, 2012, Enogex LLC submitted a revised baseline filing of their Statement of Operating Conditions to comply with an unpublished Delegated letter order issued on February 10, 2012, as more fully described in the filing.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday, March 5, 2012.

Dated: February 22, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–4768 Filed 2–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 14179–000, 14194–000]

Lock+ Hydro Friends Fund XLIV FFP Project 51, LLC; Notice Announcing Filing Priority for Preliminary Permit Applications

On February 22, 2012, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. Lock+ Hydro Friends Fund XLIV, Project No. 14179–000.

2. FFP Project 51, LLC, Project No. 14194–000.

Dated: February 22, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4799 Filed 2–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 14178–000, 14190–000]

Lock+ Hydro Friends Fund XLVII FFP Project 52, LLC; Notice Announcing Filing Priority for Preliminary Permit Applications

On February 22, 2012, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. Lock+ Hydro Friends Fund XLVII, Project No. 14178–000.

2. FFP Project 52, LLC, Project No. 14190–000.

Dated: February 22, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4798 Filed 2–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14184–000; Project No. 14191–000]

Lock+ Hydro Friends Fund XXXVIII; FFP Project 1, LLC; Notice Announcing Filing Priority for Preliminary Permit Applications

On February 22, 2012, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. Lock+ Hydro Friends Fund XXXVIII, Project No. 14184–000.

2. FFP Project 1, LLC, Project No. 14191–000.

Dated: February 22, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4792 Filed 2–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14186–000; Project No. 14197–000]

Lock+ Hydro Friends Fund XXXV; FFP Project 57, LLC;Notice Announcing Filing Priority for Preliminary Permit Applications

On February 22, 2012, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. Lock+ Hydro Friends Fund XXXV, Project No. 14186–000.
2. FFP Project 57, LLC, Project No. 14197–000.

Dated: February 22, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4790 Filed 2–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 14189–000, 14198–000]

Lock+ Hydro Friends Fund XL; FFP Project 56, LLC; Notice Announcing Filing Priority for Preliminary Permit Applications

On February 22, 2012, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. Lock+ Hydro Friends Fund XL, Project No. 14189–000.
2. FFP Project 56, LLC, Project No. 14198–000.

Dated: February 22, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4788 Filed 2–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 14131–000, 14138–00, 14135–000]

Riverbank Hydro No. 1, LLC, Lock+ Hydro Friends Fund XXXVII; Qualified Hydro 20, LLC; Notice Announcing Filing Priority for Preliminary Permit Applications

On February 22, 2012, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. Lock+ Hydro Friends Fund XXXVII, Project No. 14138–000.
2. Qualified Hydro 20, LLC, Project No. 14135–000.
3. Riverbank Hydro No. 1, LLC, Project No. 14131–000.

Dated: February 22, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4797 Filed 2–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 13824–000, 13826–000]

FFP Missouri 17, LLC BOST2 Hydroelectric, LLC; Notice Announcing Filing Priority for Preliminary Permit Applications

On February 22, 2012, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. BOST2 Hydroelectric, LLC, Project No. 13826–000.
2. FFP Missouri 17, LLC, Project No. 13824–000.

Dated: February 22, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4796 Filed 2–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14182–000; Project No. 14192–000]

Lock+ Hydro Friends Fund XLI; FFP Project 54, LLC; Notice Announcing Filing Priority for Preliminary Permit Applications

On February 22, 2012, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. FFP Project 54, LLC, Project No. 14192–000.
2. Lock+ Hydro Friends Fund XLI, Project No. 14182–000.

Dated: February 22, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4791 Filed 2–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 14188–00o, 14200–000]

Lock+ Hydro Friends Fund XXVIII; FFP Project 59, LLC; Notice Announcing Filing Priority for Preliminary Permit Applications

On February 22, 2012, the Commission held a drawing to

determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. FFP Project 59, LLC, Project No. 14200–000.

2. Lock+ Hydro Friends Fund XXXVIII, Project No. 14188–000.

Dated: February 22, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4802 Filed 2–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 14187–000, 14199–000]

Lock+ Hydro Friends Fund XXXIV; FFP Project 58, LLC; Notice Announcing Filing Priority for Preliminary Permit Applications

On February 22, 2012, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. Lock+ Hydro Friends Fund XXXIV, Project No. 14187–000.

2. FFP Project 58, LLC, Project No. 14199–000.

Dated: February 22, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4801 Filed 2–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14181–000; Project No. 14195–000]

Lock+ Hydro Friends Fund XLIII; FFP Project 53, LLC; Notice Announcing Filing Priority for Preliminary Permit Applications

On February 22, 2012, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. Lock+ Hydro Friends Fund XLIII, Project No. 14181–000.

2. FFP Project 53, LLC, Project No. 14195–000.

Dated: February 22, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4800 Filed 2–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14185–000; Project No. 14196–000]

Lock+ Hydro Friends Fund IV; FFP Project 55, LLC; Notice Announcing Preliminary Permit Drawing

The Commission has received two preliminary permit applications deemed filed on May 3, 2011, at 8:30 a.m.,[1] for proposed projects to be located on the Kentucky River, in Henry County and Owen County, Kentucky. The applications were filed by Lock+ Hydro Friends Fund IV for Project No. 14185–000 and FFP Project 55, LLC for Project No. 14196–000.

On February 28, 2012, at 9 a.m. (Eastern Time), the Secretary of the Commission, or her designee, will conduct a random drawing to determine the filing priority of the applicants identified in this notice.[2] The Commission will select among competing permit applications as provided in section 4.37 of its regulations.[3] The priority established by this drawing will be used to determine which applicant, among those with identical filing times, will be considered to have the first-filed application.

The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St. NE., Washington, DC 20426. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Dated: February 22, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–4789 Filed 2–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–60–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

Take notice that on February 15, 2012, Williston Basin Interstate Pipeline Company (Williston Basin), 1250 West Century Avenue, Bismarck, North Dakota 58503, pursuant to its blanket certificate issued in Docket Nos. CP82–487–000, *et al.*,[1] filed an application in accordance to sections 157.208(b) of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to permanently operate a mainline natural gas sales tap located in Williams County, North Dakota, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

The new sales tap was installed as an emergency natural gas transportation transaction on December 22, 2011 under Part 284, Subpart I of the Commission's Regulations. The sales tap installation included a steel pipe riser with a shut-in valve and other pipe fittings at the location located in Williston Basin's existing pipeline right-of-way. The sales tap was necessary to meet an emergency request by Montana-Dakota Utilities, Inc. (Montana-Dakota) to ensure

[1] Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2011).

[2] On February 22, 2012, the Commission held a drawing to determine priority between these two competing applications. However, an error occurred in the course of administering the drawing. Therefore, a new drawing is required.

[3] 18 CFR 4.37 (2011).

[1] 30 FERC ¶ 61,143 (1985).

uninterrupted firm sales service to Montana-Dakota's customers in the southwestern portion of the city of Williston, North Dakota. Montana-Dakota will use existing firm and interruptible transportation contracts to serve the demand through this tap; sufficient pipeline capacity exists on Williston Basin's system to serve the demand with no operational impact. The cost of the facilities constructed by Williston Basin is approximately $5,000.00 and will be fully reimbursed by Montana-Dakota.

Any questions concerning this application may be directed to Keith A. Tiggelaar, Director of Regulatory Affairs, Williston Basin Interstate Pipeline Company, 1250 West Century Avenue, Bismarck, North Dakota 58503, at (701) 530–1560, or email at *keith.tiggelaar@wbip.com.*

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERC OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Dated: February 22, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–4771 Filed 2–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12756–003; Project No. 12757–003; Project No. 12758–003]

Notice Soliciting Scoping Comments

	Project No.
BOST3 Hydroelectric Company, LLC	12756–003
BOST4 Hydroelectric Company, LLC	12757–003
BOST5 Hydroelectric Company, LLC	12758–003

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project Nos.:* P–12756–003, 12757–003, and 12758–003.

c. *Date filed:* July 26, 2010, February 24, 2011, and March 28, 2011, respectively.

d. *Applicants:* BOST3 Hydroelectric Company, LLC (BOST3), BOST4 Hydroelectric Company, LLC (BOST4), and BOST5 Hydroelectric Company, LLC (BOST5).

e. *Name of Projects:* Red River Lock & Dam No. 3 Hydroelectric Project, Red River Lock and Dam No. 4 Hydroelectric Project, and Red River Lock and Dam No. 5 Hydroelectric Project.

f. *Locations:* The proposed projects would be located at the existing Army Corps of Engineer's (Corps) Red River Lock & Dam No. 3 on the Red River, in Natchitoches Parish near the City of Colfax, Louisiana, the existing Corps Red River Lock and Dam No. 4 on the Red River, in Red River Parish near the Town of Coushatta, Louisiana, and the existing Corps Red River Lock & Dam No. 5 on the Red River, in Bossier Parish near the Town of Ninock, Louisiana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Douglas A. Spalding, BOST3 Hydroelectric Company, LLC, 8441 Wayzata Blvd., Suite 101, Golden Valley, MN 55426; (952) 544–8133, Mr. Douglas A. Spalding, BOST4 Hydroelectric Company, LLC, 8441 Wayzata Blvd., Suite 101, Golden Valley, MN 55426; (952) 544–8133, and Mr. Douglas A. Spalding, BOST5 Hydroelectric Company, LLC, 8441 Wayzata Blvd., Suite 101, Golden Valley, MN 55426; (952) 544–8133.

i. *FERC Contact:* Jeanne Edwards (202) 502–6181, or by email at *jeanne.edwards@ferc.gov.*

j. *Deadline for filing scoping comments:* 30 days from the issuance date of this notice, or March 22, 2012.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*), under the ''eFiling'' link. For a simpler method of submitting text only comments, click on ''eComment.'' For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. These applications are not ready for environmental analysis at this time.

l. *Red River Lock and Dam No. 3:* The proposed project would utilize the Corps' existing Red River Lock and Dam No. 3, and be operated consistent with the Corps current operation policy. The proposed project consists of: (1) An excavated 635-foot-long headrace channel to convey water from the upstream Pool No. 3 of the Red River to a 301-foot-long by 90-foot-wide concrete powerhouse located southwest of the end of the existing spillway; (2) an excavated 820-foot-long tailrace channel to discharge water from the powerhouse to the downstream Pool No. 2 of the Red River; (3) a 36.2-megawatt (MW) horizontal Kaplan bulb turbine/generator unit; (4) a 2,300-foot-long, 13.2-kilovolt (kV) overhead transmission line which crosses the river and connects to a Central Louisiana Electric Company substation located on the opposite side of the river; and (5) appurtenant facilities. The proposed project would generate about 172,779 megawatt-hours (MWh) annually, which would be sold to a local utility.

Red River Lock and Dam No. 4: The proposed project would utilize the Corps' existing Red River Lock and Dam No. 4, and be operated consistent with

the Corps current operation policy. The proposed project would consist of: (1) An excavated 385-foot-long headrace channel to convey water from the upstream Pool No. 4 of the Red River to a 301-foot-long by 90-foot-wide concrete powerhouse located southwest of the end of the existing overflow weir; (2) an excavated 477-foot-long tailrace channel to discharge water from the powerhouse to the downstream Pool No. 3 of the Red River; (3) a 28.1–MW horizontal Kaplan bulb turbine/generator unit; (4) a 3.0 mile-long, 34.5-kV overhead transmission line leading from a project substation located at the project's powerhouse and connecting to Central Louisiana Electric Company's existing 34.5-kV transmission line; and (5) appurtenant facilities. The proposed project would generate about 128,532 MWh annually, which would be sold to a local utility.

Red River Lock and Dam No. 5: The proposed project would utilize the Corps' existing Red River Lock and Dam No. 5, and be operated consistent with the Corps current operation policy. The proposed project would consist of: (1) an excavated 416-foot-long headrace channel to convey water from the upstream Pool No. 5 of the Red River to a 301-foot-long by 90-foot-wide concrete powerhouse located northeast of the end of the existing overflow weir; (2) an excavated 495-foot-long tailrace channel to discharge water from the powerhouse to the downstream Pool No. 4 of the Red River; (3) a 28.1–MW horizontal Kaplan bulb turbine/generator unit; (4) a 7-mile-long, 34.5-kV overhead transmission line leading from the project's powerhouse and connecting to Central Louisiana Electric Company's new substation; and (5) appurtenant facilities. The proposed project would generate about 129,400 MWh annually, which would be sold to a local utility.

m. A copy of the application(s) are available for review at the Commission in the Public Reference Room, or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number(s), excluding the last three digits in the docket number field, to access the document(s). For assistance, contact FERC Online Support. A copy is available for inspection and reproduction at the respective addresses in item h above.

n. You may register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

o. Scoping Process

The Commission staff intends to prepare a single Environmental Assessment (EA), to include all three Red River Projects (Red River Lock and Dam No. 3 Project No. 12756, Red River Lock and Dam No. 4 Project No. 12757, and Red River Lock and Dam No. 5 Project No. 12758), in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts, as well as reasonable alternatives to the proposed actions.

Commission staff does not propose to conduct any on-site scoping meetings at this time. Instead, we are soliciting comments, recommendations, and information on the Scoping Document (SD) issued on February 17, 2012.

Copies of the SD outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of the SD may be viewed on the Web at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number(s), excluding the last three digits in the docket number field(s), to access the document(s). For assistance, call 1–866–208–3676, or for TTY, (202) 502–8659.

Dated: February 22, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–4769 Filed 2–28–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at the Entergy Regional State Committee Meeting

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meeting noted below. Their attendance is part of the Commission's ongoing outreach efforts.

Entergy Regional State Committee Meeting

February 29, 2012 (1 pm–5 pm),
March 1, 2012 (8 am–12 pm).

This meeting will be held at the Astor Crowne Plaza Hotel, 739 Canal Street, New Orleans, LA 70130. The hotel phone number is 504–962–0500.

The discussions may address matters at issue in the following proceedings:

Docket No. OA07–32.	Entergy Services, Inc.
Docket No. EL00–66.	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL01–88.	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL07–52.	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL08–51.	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL08–60.	Ameren Services Co. v. Entergy Services, Inc.
Docket No. EL09–43.	Arkansas Public Service Commission v. Entergy Services, Inc.
Docket No. EL09–50.	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL09–61.	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL10–55.	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL10–65.	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL11–34.	Midwest Independent System Transmission Operator, Inc.
Docket No. ER05–1065.	Entergy Services, Inc.
Docket No. ER07–682.	Entergy Services, Inc.
Docket No. ER07–956.	Entergy Services, Inc.
Docket No. ER08–1056.	Entergy Services, Inc.
Docket No. ER09–833.	Entergy Services, Inc.
Docket No. ER09–1224.	Entergy Services, Inc.
Docket No. ER10–794.	Entergy Services, Inc.
Docket No. ER10–1350.	Entergy Services, Inc.
Docket No. ER10–1676.	Entergy Services, Inc.
Docket No. ER10–2001.	Entergy Arkansas, Inc.
Docket No. ER10–3357.	Entergy Arkansas, Inc.
Docket No. ER11–2131.	Entergy Arkansas, Inc.
Docket No. ER11–2132.	Entergy Gulf States, Louisiana, LLC.
Docket No. ER11–2133.	Entergy Gulf States, Louisiana, LLC.
Docket No. ER11–2134.	Entergy Mississippi, Inc.
Docket No. ER11–2135.	Entergy New Orleans, Inc.
Docket No. ER11–2136.	Entergy Texas, Inc.
Docket No. ER11–3156.	Entergy Arkansas, Inc.
Docket No. ER11–3657.	Entergy Arkansas, Inc.
Docket No. ER12–480.	Midwest Independent Transmission System Operator, Inc.

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory

Commission at (317) 249–5937 or *patrick.clarey@ferc.gov.*

Dated: February 22, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–4773 Filed 2–28–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–9340 -3]

Access to Confidential Business Information; Protection Strategies Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Protection Strategies Incorporated (PSI) of Arlington, VA, to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data occurred on or about February 16, 2012.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Pamela Moseley, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8956; fax number: (202) 564–8955; email address: *moseley.pamela@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

II. What action is the agency taking?

Under EPA Contract Number GS–07F–0442N, Task Order Number EP–G12H–00323, contractor PSI of 2300 9th Street South, Suite 400, Arlington, VA, will assist the Office of Pollution Prevention and Toxics (OPPT) in providing support for work on alarms; card readers; doors; locks; and keys. The contractor will also escort workers or maintenance personnel during security hours.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA Contract Number GS–07F–0442N, Task Order Number EP–G12H–00323, PSI will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. PSI's personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide PSI access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters in accordance with EPA's *TSCA CBI Protection Manual.*

Access to TSCA data, including CBI, will continue until February 15, 2016. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

PSI's personnel have been required to sign nondisclosure agreements and have been briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: February 22, 2012.

Matthew G. Leopard,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2012–4845 Filed 2–28–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2012–0103; FRL–9641–1]

Agency Information Collection Activities; Proposed Collection; Comment Request; Diesel Emissions Reduction Act (DERA) Rebate Program (New); EPA ICR No. 2461.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting public comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 30, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2012–0103, by one of the following methods:

www.regulations.gov: Follow the on-line instructions for submitting comments.

Email: a-and-r-docket@epa.gov.

Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket and Information Center, Mail Code 2822T,

1200 Pennsylvania Ave. NW., Washington, DC 20460.

Hand Delivery: EPA Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2012–0103. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means 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/dockets/.*

FOR FURTHER INFORMATION CONTACT: Julie Henning, Office of Transportation and Air Quality, National Vehicle and Fuel Emissions Laboratory, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4442; fax number: 734–214–4958; email address: *henning.julie@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2012–0103, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES.**
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected Entities: Entities potentially affected by this action are those interested in applying for a rebate under EPA's Diesel Emission Reduction Act (DERA) Rebate Program.

Title: Diesel Emissions Reduction Act (DERA) Rebate Program (New). ICR Numbers: EPA ICR No. 2461.01, OMB Control No. 2060–NEW.

ICR Status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This is a new Information Collection Request (ICR) for the Diesel Emission Reduction Act program (DERA) authorized by Title VII, Subtitle G (Sections 791 to 797) of the Energy Policy Act of 2005 (Pub. L. 109–58), as amended by the Diesel Emissions Reduction Act of 2010 (Pub. L. 111–364), codified at 42 U.S.C. 16131 *et seq.* DERA provides the Environmental Protection Agency (EPA) with the authority to award grants, rebates or

low-cost revolving loans on a competitive basis to eligible entities to fund the costs of a retrofit technology that significantly reduces diesel emissions from mobile sources through implementation of a certified engine configuration, verified technology, or emerging technology. Eligible mobile sources include buses (including school buses), medium heavy-duty or heavy heavy-duty diesel trucks, marine engines, locomotives, or nonroad engines or diesel vehicles or equipment used in construction, handling of cargo (including at port or airport), agriculture, mining, or energy production. In addition, eligible entities may also use funds awarded for programs or projects to reduce long-duration idling using verified technology involving a vehicle or equipment described above. The objective of the assistance under this program is to achieve significant reductions in diesel emissions in terms of tons of pollution produced and reductions in diesel emissions exposure, particularly from fleets operating in areas designated by the Administrator as poor air quality areas.

EPA uses approved procedures and forms to collect necessary information to operate a grant program, and has been providing grants under DERA since Fiscal Year 2008. EPA is requesting approval through this ICR for forms needed to collect necessary information to operate a rebate program as authorized by Congress under the DERA program.

EPA will collect information from applicants who wish to apply for a rebate under the DERA rebate program. Information collected from applicants will ensure that they are eligible to receive funds under DERA, that funds are provided for eligible activities, and to calculate estimated and actual emissions benefits that result from activities funded with rebates as required in DERA's authorizing legislation.

Burden Statement: The annual respondent reporting and recordkeeping burden for this collection of information is estimated to average 7.925 hours per response. Burden means the total time, effort, or financial resources expended by respondents to generate, maintain, retain, disclose or provide information to, or for, a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 120 rebate applicants.

Frequency of response: Voluntarily as needed.

Estimated total average number of responses for each respondent: 2.

Estimated total annual burden hours: 894 hours.

Estimated total annual costs: $44,547. This includes an estimated labor burden cost of $44,547 and an estimated cost of $0 for capital investment or maintenance and operational costs.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend this ICR as appropriate. EPA will also revise the burden estimates based on the final PGP. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: February 21, 2012.

Karl Simon,

Director, Transportation and Climate Division, Office of Transportation and Air Quality.

[FR Doc. 2012–4844 Filed 2–28–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9640–8; EPA–HQ–OW–2010–0782]

Final National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Construction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final permit issuance.

SUMMARY: EPA's Regional Offices are issuing their final 2012 National Pollutant Discharge Elimination System general permit for stormwater discharges from large and small construction activities. This construction general permit includes new requirements that implement the technology-based Effluent Limitation Guidelines and New Source Performance Standards, which were issued by EPA for the construction and development industry on December 1, 2009. The permit also includes new water quality-based requirements for construction sites discharging stormwater to waters requiring additional pollutant control. EPA is issuing this construction general permit for five (5) years, during which time the permit will provide coverage to eligible existing and new construction projects in all areas of the country where EPA is the National Pollutant Discharge Elimination System permitting authority, including Idaho, Massachusetts, New Hampshire, and New Mexico, Indian Country Lands, Puerto Rico, Washington, DC, and U.S. territories and protectorates.

DATES: The permit became effective on February 16, 2012. This effective date is necessary to provide dischargers with the immediate opportunity to comply with Clean Water Act requirements in light of the expiration of the 2008 CGP on February 15, 2012. In accordance with 40 CFR part 23, this permit shall be considered issued for the purpose of judicial review on March 1, 2012. Under section 509(b) of the Clean Water Act, judicial review of this general permit can be had by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings. Deadlines for submittal of notices of intent are provided in Part 1.4.2 of the permit. This permit also provides additional dates for compliance with the terms of these permits.

FOR FURTHER INFORMATION CONTACT: For further information on the final NPDES general permit, contact the appropriate EPA Regional office listed in Section I.G, or you can send an email to *cgp@epa.gov.* You may also contact Greg Schaner, EPA Headquarters, Office of Water, Office of Wastewater Management at tel.: 202–564–0721, Erika Farris, EPA Headquarters, Office of Water, Office of Wastewater Management at tel.: 202–564–7548, or Jeremy Bauer, EPA Headquarters, Office of Water, Office of Wastewater Management at tel: 202–564–2775.

SUPPLEMENTARY INFORMATION: This supplementary information is organized as follows:

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I. General Information

A. Does this action apply to me?

The final 2012 construction general permit (also referred to as ''CGP'' or ''2012 CGP'') applies to the following construction activities:

TABLE 1—ENTITIES POTENTIALLY REGULATED BY THIS PERMIT

Category	Examples of Affected Entities	North American Industry Classification System (NAICS) Code
Industry	Construction site operators disturbing 1 or more acres of land, or less than 1 acre but part of a larger common plan of development or sale if the larger common plan will ultimately disturb 1 acre or more, and performing the following activities:	
	Construction of Buildings	236
	Heavy and Civil Engineering Construction	237

EPA does not intend the preceding table to be exhaustive, but provides it as a guide for readers regarding entities likely to be regulated by this action. This table lists the types of activities that EPA is now aware of that could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is regulated by this action, you should carefully examine the definition of ''construction activity'' and ''small construction activity'' in existing EPA regulations at 40 CFR 122.26(b)(14)(x) and 122.26(b)(15), respectively. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Coverage under this permit is available to operators of eligible projects located in those areas where EPA is the permitting authority and has opted to make this general permit available for use. A list of eligible areas is included in Appendix B of the final CGP. Eligibility for coverage under the 2012 CGP is limited to operators of stormwater discharges from ''new projects'', ''existing projects'', and ''new operators of a new or existing project''. A ''new project'' is a construction project that commenced or will commence construction activities on or after February 16, 2012. An ''existing project'' is a construction project that commenced construction prior to February 16, 2012. A ''new operator of a new or existing project'' is an operator that replaces an existing operator on a construction project through transfer or ownership and/or operation. EPA notes that the permit also provides coverage for ''emergency-related projects'', which are construction projects that are carried out in response to a public emergency, and that require immediate authorization to avoid imminent endangerment to human health or the environment, or to reestablish essential public services.

B. How can I get copies of these documents and other related information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. EPA–HQ–OW–2010–0782. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Although all documents in the docket are listed in an index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the EPA Docket Center Public Reading Room, 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 Water Docket is (202) 566–2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the United States government on-line source for Federal regulations at *http://www.regulations.gov*.

Electronic versions of this final permit and fact sheet are available on EPA's NPDES Web site at *http://www.epa.gov/npdes/stormwater/cgp*.

An electronic version of the public docket is available through the EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/dockets*. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the Docket Facility identified in Section I.B.1.

C. Who are the EPA regional contacts for this final permit?

For EPA Region 1, contact Newton Tedder at tel.: (617) 918–1038 or email at *tedder.newton@epa.gov*.

For EPA Region 2, contact Stephen Venezia at tel.: (212) 637–3856 or email at *venezia.stephen@epa.gov,* or for Puerto Rico, contact Sergio Bosques at tel.: (787) 977–5838 or email at *bosques.sergio@epa.gov*.

For EPA Region 3, contact Chuck Schadel at tel.: (215) 814–5761 or email at *schadel.chuck@epa.gov*.

For EPA Region 4, contact Michael Mitchell at tel.: (404) 562–9303 or email at *mitchell.michael@epa.gov*.

For EPA Region 5, contact Brian Bell at tel.: (312) 886–0981 or email at *bell.brianc@epa.gov*.

For EPA Region 6, contact Suzanna Perea at tel.: (214) 665–7217 or email at *perea.suzanna@epa.gov*.

For EPA Region 7, contact Mark Matthews at tel.: (913) 551–7635 or email at *matthews.mark@epa.gov*.

For EPA Region 8, contact Greg Davis at tel.: (303) 312–6314 or email at *davis.gregory@epa.gov*.

For EPA Region 9, contact Eugene Bromley at tel.: (415) 972–3510 or email at *bromley.eugene@epa.gov*.

For EPA Region 10, contact Margaret McCauley at tel.: (206) 553–1772 or email at *mccauley.margaret@epa.gov*.

II. Background of Permit

A. Statutory and Regulatory History

The Clean Water Act (''CWA'') establishes a comprehensive program ''to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' 33 U.S.C. 1251(a). The CWA also includes the objective of attaining ''water quality which provides for the protection and propagation of fish, shellfish and wildlife and * * * recreation in and on the water.'' 33 U.S.C. 1251(a)(2)). To achieve these goals, the CWA requires EPA to control discharges of pollutants from point sources through the issuance of National Pollutant Discharge Elimination System (''NPDES'') permits.

The Water Quality Act of 1987 (WQA) added section 402(p) to the Clean Water Act (CWA), which directed EPA to develop a phased approach to regulate stormwater discharges under the NPDES program. 33 U.S.C. 1342(p). EPA published a final regulation in the **Federal Register**, often called the ''Phase I Rule'', on November 16, 1990, establishing permit application requirements for, among other things, ''storm water discharges associated with industrial activity.'' See 55 FR 47990. EPA defines the term ''storm water discharge associated with industrial activity'' in a comprehensive manner to cover a wide variety of facilities. See id. Construction activities, including activities that are part of a larger common plan of development or sale, that ultimately disturb at least five acres of land and have point source discharges to waters of the U.S. were included in the definition of ''industrial activity'' pursuant to 40 CFR 122.26(b)(14)(x). The second rule implementing section 402(p), often called the Phase II Rule, was published in the **Federal Register** on December 8, 1999. It requires NPDES permits for discharges from construction sites disturbing at least one acre but less than five acres, including sites that are part of a larger common plan of development or sale that will ultimately disturb at least one acre but less than five acres, pursuant to 40 CFR 122.26(b)(15)(i). See 64 FR 68722. EPA is proposing to issue this final CGP under the statutory and regulatory authority cited above.

NPDES permits issued for construction stormwater discharges are required under Section 402(a)(1) of the CWA to include conditions to meet technology-based effluent limits established under Section 301 and, where applicable, Section 306. Effluent limitations guidelines (ELGs) and New Source Performance Standards (NSPS) are technology-based effluent limitations that are based on the degree of control that can be achieved using various levels of pollutant control technology as defined in Subchapter III of the CWA.

Once a new national standard is established in accordance with these sections, NPDES permits must incorporate limits based on such technology-based standards. See CWA sections 301 and 306, 33 U.S.C. 1311 and 1316, and 40 CFR 122.44(a)(1). Prior to the issuance of such national standards, permitting authorities are required to incorporate technology-based limits on a best professional judgment basis. CWA section 402(a)(1); 40 CFR 125.3(a)(2)(ii)(B). On December 1, 2009, EPA published final regulations establishing technology-based Effluent Limitations Guidelines (ELGs) and New Source Performance Standards (NSPS) for the Construction & Development (C&D) point source category. See 40 CFR Part 450, and 74 FR 62996 (December 1, 2009). The Construction & Development Rule, or ''C&D rule'', became effective on February 1, 2010; therefore, all NPDES construction permits issued by EPA or states after this date must incorporate the C&D rule requirements. Because EPA will be issuing its new CGP after the effective date of the C&D rule, the Agency is required by the CWA and 40 CFR 122.44(a)(1) to incorporate into its new CGP all applicable C&D rule requirements.

B. Stay of the C&D Rule Numeric Limit and Implications for this Permit

The C&D rule was finalized on December 1, 2009, and included non-numeric requirements for erosion and sediment control, stabilization, and pollution prevention (see 40 CFR 450.21(a) thru (f)), and, for the first time, a numeric limitation on the discharge of turbidity from active construction sites (see 40 CFR 450.22). Since its promulgation, EPA discovered that the data used to calculate the numeric limit for turbidity were misinterpreted, and that it was necessary to recalculate the numeric limit.

On August 12, 2010, EPA filed a motion with the U.S. Court of Appeals for the Seventh Circuit, requesting the Court issue an order vacating and remanding to the Agency limited portions of the final C&D rule, specifically the numeric turbidity limit. To address the specific issues raised by petitioners, the motion also provided that EPA:

- ''May address (and if necessary take further regulatory action on) certain impacts of the final rule specific to linear gas and electricity utility projects.''
- Will ''solicit site specific information regarding the applicability of a numeric limit'' to cold weather sites and to small sites that are part of a larger plan of development that is subject to the numeric limit.

On August 24, 2010, the U.S. Court of Appeals for the Seventh Circuit remanded the matter to EPA but did not vacate the numeric limit. On September 9, 2010, the National Association of Home Builders (NAHB) filed a motion for clarification (which EPA did not oppose) asking the Court to (1) vacate the limit and (2) hold the case in abeyance instead of remanding the matter to EPA. On September 20, 2010, the Court granted the motion in part by ruling to hold the matter in abeyance pending EPA consideration of the numeric limit and the other remand issues, but the Court did not vacate the numeric limit. Instead, the Court stated that ''EPA may make any changes to the limit it deems appropriate, as authorized by law.''

On November 5, 2010, EPA issued a direct final regulation and a companion proposed regulation to stay the numeric limitation at 40 CFR 450.22 indefinitely. The stay took effect on January 4, 2011, resulting in an indefinite postponement of the implementation of the 280 NTU limit. Since the numeric portion of the rule was stayed, EPA and the states are no longer required to incorporate the numeric turbidity limitation and monitoring requirements found at § 450.22(a) and § 450.22(b). However, the remainder of the regulation is still in effect and must be incorporated into newly issued permits.

EPA notes that it published a **Federal Register** notice on January 3, 2012

requesting additional data on the performance of technologies in controlling turbidity in stormwater discharges from construction sites. The notice also requests information on other topics relevant to establishing numeric effluent limitations for stormwater discharges from these sites, including sample collection, applicability to linear electric transmission line construction, cold weather considerations, and the ability of small sites to meet a numeric standard. See 77 FR 112 (January 3, 2012).

The final CGP is directly affected by the stay in that, due to the stay, the permit does not need to include the numeric turbidity limit. When EPA issued the draft permit for public comment, the Agency was uncertain whether its work to complete the recalculation of the numeric turbidity limit would be completed in time to incorporate into the final permit. To be able to implement the yet-to-be promulgated turbidity limit in the final permit, EPA included in the draft permit a placeholder for the effluent limit, as well as proposed implementation requirements such as turbidity monitoring and reporting protocols. Because EPA is still in the process of collecting data to support the recalculation of the numeric turbidity limit, and therefore a final numeric turbidity limit is not yet available to implement, the Agency has finalized the CGP without the numeric limit and related monitoring and reporting requirements. EPA has, however, implemented the remaining portion of the C&D rule that was not affected by the stay of the numeric limit.

III. Summary of the Final CGP

Today's final permit includes new requirements that implement the portions of the effluent limitations guidelines and new source performance standards in the C&D rule that are unaffected by the stay of the numeric turbidity limit. Under these rules, site operators are required to install and implement stormwater measures to accomplish erosion and sediment control, pollution prevention, and stabilization. For sites that discharge to waters where additional controls are necessary to ensure compliance with applicable water quality standards, the final permit includes new water quality-based effluent limits. This section summarizes the C&D rule requirements upon which the permit's technology-based requirements are based, and highlights the significant new permit provisions included in the final permit.

A. Non-Numeric C&D Rule Requirements

The non-numeric effluent limitations in the C&D rule are designed to prevent the mobilization and discharge of sediment and sediment-bound pollutants, such as nutrients, and to prevent or minimize exposure of stormwater to construction materials, debris, and other sources of pollutants on construction sites. In addition, these non-numeric effluent limitations limit the generation of dissolved pollutants. For background, soil on construction sites can contain a variety of pollutants such as nutrients, organics, pesticides, herbicides, and metals. These pollutants may be present naturally in the soil, such as arsenic or selenium, or they may have been contributed by previous activities on the site, such as agriculture or industrial activities. These pollutants, once mobilized by stormwater, can detach from the soil particles and become dissolved pollutants. Once dissolved, these pollutants would not be removed by down-slope sediment controls. Source control through minimization of soil erosion is therefore the most effective way of controlling the discharge of these pollutants.

The non-numeric effluent limits in the C&D rule, upon which the technology-based requirements in the final CGP are based, include the following:

• *Erosion and Sediment Controls:* Permittees are required to design, install, and maintain effective erosion and sediment controls to minimize the discharge of pollutants. At a minimum, such controls must be designed, installed, and maintained to:

1. Control stormwater volume and velocity within the site to minimize soil erosion;

2. Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and streambank erosion;

3. Minimize the amount of soil exposed during construction activity;

4. Minimize the disturbance of steep slopes;

5. Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity, and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;

6. Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal, and maximize stormwater infiltration, unless infeasible; and

7. Minimize soil compaction and, unless infeasible, preserve topsoil.

• *Soil Stabilization Requirements:* Permittees are required to, at a minimum, initiate soil stabilization measures immediately whenever any clearing, grading, excavating, or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the permitting authority. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed and vegetative stabilization measures must be initiated as soon as practicable.

• *Dewatering Requirements:* Permittees are required to minimize the discharge of pollutants from dewatering trenches and excavations. Discharges are prohibited unless managed by appropriate controls.

• *Pollution Prevention Measures:* Permittees are required to design, install, implement, and maintain effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented and maintained to:

1. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or an alternative control that provides equivalent or better treatment prior to discharge;

2. Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and

3. Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

• *Prohibited Discharges:* The following discharges from regulated construction sites are prohibited:

1. Wastewater from washout of concrete, unless managed by an appropriate control;

2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;

3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

4. Soaps or solvents used in vehicle and equipment washing.

• *Surface Outlets:* When discharging from basins and impoundments, permittees are required to utilize outlet structures that withdraw water from the surface, unless infeasible.

When EPA was writing the C&D rule's final non-numeric effluent limits listed above, the Agency intended to provide discretion to permitting authorities to determine how best to implement these provisions with respect to requiring controls and measures appropriate for the conditions in their permitted areas. For example, the preamble to the C&D rule explains that ''EPA purposefully drafted the non-numeric effluent limitations to allow for flexibility in how the permitting authority implements the requirement in NPDES permits.'' See 74 FR 63016. As the permitting authority responsible for issuing stormwater permits for construction activities in four states, Indian Country, construction by Federal Operators, Washington, DC, and U.S. territories/protectorates, EPA believes that it is important in this final permit to include requirements that more specifically define what EPA believes are appropriate to implement each of the C&D rule's non-numeric limits. Accordingly, in translating the C&D rule requirements into the final CGP, EPA added specificity to many of the C&D rule provisions that it believed would benefit from further definition, such as the requirements to ''provide and maintain natural buffers'' and to ''minimize soil compaction'', among others.

B. Numeric C&D Rule Requirements

As stated above in Section II.B, the numeric turbidity limit portion of the C&D rule has been indefinitely stayed. Because a recalculated numeric limit has not yet been promulgated, this permit does not include a technology-based numeric turbidity limit, nor does it include related monitoring and reporting requirements that would implement such a limit.

C. Water Quality-Based Effluent Limits

Because the C&D rule requirements are technology-based, they do not account for the level of pollutant control that may be necessary in a specific area to meet applicable water quality standards. CWA Section 301(b)(1)(C) and EPA's regulations at 40 CFR 122.44(d)(1) require permitting authorities to include additional or more stringent permit requirements when necessary to achieve water quality standards. With this requirement in mind, the final CGP includes additional requirements that apply to those sites that discharge to waters impaired for sediment, sediment-related parameters, or nutrients, including nitrogen and phosphorus, which are parameters typically associated with stormwater discharges from construction sites, and to those sites that discharge to waters requiring enhanced protection under a state or tribe's antidegradation requirements. To assist construction operators in determining if their site discharges to an impaired water, EPA has developed and made available an Internet-based tool, which links watershed-based geographical mapping information with state and tribal lists of impaired waters. The mapping tool can be accessed through the eNOI system at *http://cfpub.epa.gov/npdes/stormwater/enoi.cfm*.

D. Summary of Significant Changes from the 2008 CGP

The final permit includes a number of new or modified requirements, many of which are related to the implementation of the new C&D rule effluent limits, and thus differ from the 2008 CGP. The following list summarizes the changes to the CGP:

1. *Structure/Appearance of Permit:* EPA attempted to restructure its CGP so that it would be better organized to present requirements in a generally more readable manner. It is EPA's hope that this structure will enhance the permittees' understanding of and compliance with the permit's requirements. For instance, the permit's stormwater control requirements are organized into distinct and related categories, such as erosion and sediment control requirements, stabilization requirements, and pollution prevention requirements.

2. *Eligibility for Emergency-Related Construction:* EPA provides immediate authorization for construction activities required for response to public emergencies (e.g., natural disaster such as a tornado or hurricane, widespread disruption in essential public services). Immediate authorization will enable work that is necessary to avoid imminent endangerment to human health or the environment, or to reestablish essential public services, to proceed without administrative delay. The construction operator must submit an NOI and develop a stormwater pollution prevention plan (SWPPP) within 30 calendar days after commencing earth-disturbing activities, whereas typically operators must submit NOIs 14 days prior to commencing earth-disturbing activities.

3. *Eligibility for Use of Treatment Chemicals:* EPA authorizes the use of polymers, flocculants, or other treatment chemicals at sites provided operators using treatment chemicals comply with the requirements in Part 2.1.3.3 of the permit. The use of cationic treatment chemicals is not eligible for permit coverage unless the applicable EPA Regional Office specifically approves its use together with any additional controls necessary to ensure that the use of such chemicals does not result in an exceedance of applicable water quality standards.

4. *Endangered Species and Historic Properties Requirements:* Construction operators are required to follow the procedures for determining eligibility related to the protection of listed endangered or threatened species and their critical habitat and to the consideration of impacts to historic properties. See Appendices D and E, respectively.

5. *Authorization Process/NOIs:* EPA has increased the ''waiting period'' from 7 days to 14 days for construction site operators seeking coverage under this permit. This new 14-day timeframe is intended to better reflect the endangered species-related reviews that must take place prior to authorization. EPA also is hoping to maximize the use of its electronic NOI, or eNOI, process for authorizing construction discharges by requiring that construction operators seek coverage using the eNOI system. A ''paper NOI'' will still be allowed, but prior approval by the applicable EPA Region is necessary.

6. *Sediment and Erosion Controls:* The final permit includes specific requirements that implement the C&D rule's sediment and erosion control limits. While some of these requirements are already included in the 2008 CGP, the final permit includes more detail and additional requirements in order to more closely track the language and organization of the C&D rule. The following is a list of requirements that can be considered significant modifications to the 2008 CGP:

i. *Installation of Sediment Controls Prior to Construction*—By the time earth-disturbing activities in any given portion of the site have begun, operators must install and make operational any downgradient sediment controls for the initial site clearing, grading, excavating, and other land-disturbing activities, unless infeasible. Following the installation of these initial controls, all other stormwater controls described in

the SWPPP must be installed and made operational as soon as conditions allow.

ii. *General Maintenance Requirements*—The final permit includes requirements for initiating work to fix problems on the same day that they are found and completing such work by the close of the next work day if the problem does not require significant repair or replacement, or if the problem can be corrected through routine maintenance.

iii. *Buffer Compliance Alternatives*—To implement the C&D rule requirement to provide and maintain natural buffers around surface waters, unless infeasible, sites must ensure that any discharges flowing through the area between the disturbed portions of the property and any surface waters located within 50 feet of the property on which the construction activities will occur are treated by an area of undisturbed natural vegetation and/or additional erosion and sediment controls to achieve a reduction in sediment loads equivalent to that achieved by 50 feet of undisturbed natural vegetation. Certain exemptions to this requirement based on feasibility considerations are also provided. Appendix G of the final permit has been added to provide guidance to operators in complying with this requirement.

iv. *Perimeter Controls*—Operators are required to install sediment controls along those perimeter areas of the site that will receive stormwater from earth-disturbing activities.

v. *Exit Points*—Operators are required to minimize track-out of sediment onto streets and other paved areas from vehicles exiting the construction site. To comply with this requirement, the operator must (1) restrict vehicle use to properly designated exit points, (2) use appropriate stabilization techniques and other controls, as necessary, at all points that exist onto paved roads, (3) where necessary, use additional controls to remove sediment from vehicle tires prior to exit and (4) remove tracked-out sediment from paved surfaces by the end of the work day in which the track out occurs or by the end of the next work day if track-out occurs on a non-work day.

vi. *Storm Drain Inlets*—Controls must be installed and maintained to remove sediment from the discharge prior to entry into any storm drain inlets that carry stormwater flow directly from the site to a surface water and that are accessible to the operator.

vii. *Dewatering Practices*—Specific controls and discharge restrictions apply to sites that will discharge ground water or accumulated stormwater removed from excavations, trenches, foundations, vaults, or other similar points of accumulation.

5. *Stabilization Requirements:* The permit includes modified stabilization requirements that define more specifically what EPA requires for temporary and final stabilization.

6. *Pollution Prevention:* Beyond adopting the specific C&D rule requirements for pollution prevention and the prohibition of certain discharges, the final permit includes specific control requirements that ensure pollutant discharges are eliminated or minimized, depending on the source. The pollution prevention requirements restrict the discharge of a wide range of construction-related chemicals and materials, including fertilizers, at construction sites.

7. *Water Quality-Based Effluent Limits:* In addition to general requirements that protect water quality in all receiving waters, the final permit includes specific requirements that apply to sites discharging to waters impaired for common pollutants associated with construction activities, such as sediment and nutrients, and to sites discharging to high quality waters. For such sites, construction activities are subject to additional requirements, including tighter stabilization deadlines (complete stabilization within 7 calendar days of the temporary or permanent cessation of construction activities) and more frequent site inspections. The permit also includes additional requirements for waters identified as Tier 2, Tier 2.5, or Tier 3 for antidegradation purposes.

8. *Site Inspections:* The frequency of inspections generally is increased relative to the 2008 CGP. EPA believes that inspections are a cost-effective means of ensuring that controls are operating properly and thus protecting water quality. The storm event size that triggers site inspections for those using a storm-based schedule is also decreased from a 0.5 inch storm event to a 0.25 inch storm event. EPA has found that most storm events of 0.25 inches or greater do lead to discharges, so that inspection is warranted if the operator is using a storm-based inspection schedule. For multi-day storms, EPA has also clarified that an inspection is required both after the first day of the event and after the end of the event. As in the 2008 CGP, operators may also choose a fixed inspections schedule that is not storm dependent. EPA makes explicit the requirement for permittees to visually assess the quality of the discharge (e.g., color, odor, floating, settled, or suspended solids) if the site inspection occurs during a discharge-generating rain event.

9. *Corrective Actions:* Although the 2008 CGP required corrective action, it did not include specific requirements instructing the permittee as to what conditions trigger specific corrective actions and what deadlines apply. The final permit includes specific triggering conditions for corrective action as well as deadlines to fix such problems and document what was done.

10. *Stormwater Pollution Prevention Plan* (SWPPP): The SWPPP requirements are modified in accordance with the changes discussed above. In general, the requirements are more specific than, but consistent with the 2008 CGP.

11. *Notice of Termination:* EPA includes additional requirements that affect when a site may terminate coverage under the CGP. For instance, beyond enabling sites to terminate coverage when earth-disturbing activities have stopped and the site is stabilized, the permit requires the removal of all temporary stormwater controls and construction materials, waste, and waste handling devices.

E. Construction Projects Eligible for Permit Coverage

This final permit provides coverage to eligible operators of ''new projects'', ''existing projects'', and ''new operators of existing or new projects.'' Operators of new projects must submit a Notice of Intent (NOI) to EPA 14 days prior to commencing earth-disturbing activities to obtain coverage under this permit. The exception is for operators of emergency-related projects, which may commence construction activities immediately provided they submit an NOI within 30 days of commencing such activities. For existing projects, although the existing 2008 CGP has expired, operators are authorized under the expired permit until they are provided coverage under today's permit, in accordance with EPA's regulations at 40 CFR 122.6. A similar approach also applies to new projects that commence construction on or after February 16, 2012, but no later than March 1, 2012. Within 90 days of the issuance of this final permit, operators of existing projects must complete an NOI for coverage under the new permit. If a permitted operator is transferring control of a construction project to a new operator, the new operator must submit an NOI 14 days prior to the date of transfer.

F. Geographic Coverage

This permit provides coverage for stormwater discharges from construction activities that occur in areas where EPA is the permitting

authority. The areas of geographic coverage of this permit are listed in Appendix B, and include the states of New Hampshire, Massachusetts, New Mexico, and Idaho as well as all Indian Country lands, and construction by Federal Operators in selected states. Permit coverage is also provided in Puerto Rico, the District of Columbia, and the Pacific Island territories. The only changes to the 2008 CGP's area of coverage is that Indian Country lands in Region 4 are now added to the final permit's area of coverage, and due to a phased delegation of the NPDES program to the state of Alaska starting in late 2008, EPA now retains NPDES permitting authority only for discharges occurring within the Denali National Park and Preserve, and in Indian Country located within the state of Alaska.

In addition, because certifications required by Section 401 of the Clean Water Act, and for a few states certifications required by the Coastal Zone Management Act, were not received in time, new and existing construction projects in the following areas are not yet eligible for coverage under this permit:

- The State of Idaho;
- Construction in the State of Washington by Federal Operators;
- The Fond Du Lac Band and Grand Portage Band of Lake Superior Chippewa in Minnesota; and
- Bad River, Lac Du Flambeau, and Sokaogon Chippewa (Mole Lake) Community in Wisconsin.

EPA will announce the availability of coverage under the CGP for these areas in separate **Federal Register** notice(s) as soon as possible after the certifications are completed. In the meantime, operators of new construction projects in these areas may apply for coverage with their EPA Regional Office under an individual NPDES permit. For operators of existing projects that are currently covered under either the 2003 or 2008 CGPs, their coverage will continue under those permits. If the project will continue after the date that the 2012 CGP becomes available in the applicable area, the operator will be given 90 days to file an NOI for coverage under this permit.

IV. Webcasts, Guidance, and Other Implementation Assistance

Following issuance of this permit, EPA plans to provide further assistance to construction operators, state permitting authorities, and other interested parties on various aspects of this new permit. The following activities or documents are already planned:

- *National Webcast:* EPA will host a webcast on March 15, 2012 that will provide an overview of the new permit and an opportunity for participants to ask questions. EPA anticipates that more webcasts will be offered covering the same material or more specific aspects of the permit. The Agency will announce any future webcasts on the CGP Web site at *http://cfpub.epa.gov/npdes/stormwater/cgp.cfm*.
- *SWPPP Template, SWPPP Guide and Sample SWPPPs:* EPA has provided an updated *SWPPP Template* that can be used by construction operators to put together their site-specific SWPPP document. The *SWPPP Template,* which is available at *http://cfpub.epa.gov/npdes/stormwater/cgp.cfm*, has been updated to include the new requirements of the 2012 CGP. EPA is also in the process of updating its SWPPP guide, *Developing Your Stormwater Pollution Prevention Plan: A Guide for Construction Sites.* While EPA plans to make the updated SWPPP guide available in the next few months, construction operators may still find the guide useful as an overall planning document and for specific components of the SWPPP, to the extent that they are consistent with the new permit's requirements. Additionally, EPA also plans to provide in the near future updated, sample SWPPPs, which will illustrate examples of what the Agency believes to be documents that comply with the Part 7 SWPPP requirements of the new permit.
- *Inspection Report Template:* EPA will also be providing an updated template form that can be used by construction operators to document inspections completed pursuant to the new permit's requirements in Part 4.

EPA will consider additional outreach to support the new permit based on the level of interest and demand.

V. National Environmental Policy Act (NEPA)

Pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4307h), the Council on Environmental Quality's NEPA regulations (40 CFR part 15), and EPA's regulations for implementing NEPA (40 CFR part 6), EPA has prepared an Environmental Assessment (EA) that analyzed the potential environmental impacts of issuing the new CGP. The EA considered the potential environmental impacts from the discharge of pollutants in stormwater discharges associated with construction activity where EPA is the permitting authority. The environmental review process, which is documented by the EA, indicated that no significant environmental impacts are anticipated from the issuance of the new CGP. The EA was posted on the docket for this permit at *http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OW-2010-0782-0173* for public review and comment. Accordingly after evaluating comments received on the EA, EPA issued a Finding of No Significant Impact (FONSI) to document this determination.

For further information regarding NEPA contact: Jessica Trice, NEPA Compliance Division, Office of Federal Activities, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Mail Code: 2252A, Washington, DC 20460. Telephone: (202) 564–6646.

VI. Executive Orders 12866 and 13563

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

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

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

EPA has determined that this permit 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 provisions in this permit include new requirements for erosion and sediment control and pollution prevention, and result in an increase in the level of environmental protection. For sites covered under the new permit, the requirements in this permit apply equally to all construction projects that disturb one or more acres in areas where EPA is the permitting authority, and therefore do not disproportionately and adversely affect minority or low-income populations.

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

In compliance with Executive Order 13175, EPA has consulted with tribal officials to gain an understanding of and, where necessary, to address the tribal implications of the final CGP. In the course of this consultation, EPA undertook the following activities:

- *December 15, 2010*—EPA presented an overview of the current CGP and the requirements in the C&D rule to the National Tribal Water Council. The presentation was posted on the Council's portal Web site at *http://www.epa.gov/tp/consultation/calendar-arch.htm*.
- *March 16, 2011*—EPA presented additional information to the Council related to the CGP and the C&D rule requirements that would be incorporated into the proposed permit. This presentation, as well as a document providing written answers to questions, was posted on the Council's portal Web site at *http://www.epa.gov/tp/pdf/meeting-qa-031611.pdf*.
- *April 26, 2011*—EPA provided email notification to Tribes of the April 25, 2011 proposal of the draft CGP, and invited those interested to provide the Agency with comments. EPA notes that during the public comment period on the proposed CGP, EPA received written comments from one tribe. The tribe provided specific comments requesting modifications or clarification for provisions in several permit sections, including erosion and sediment control, pollution prevention, water quality-based requirements, inspections, corrective action, and permit termination. EPA addressed many of the tribe's concerns in the final permit, and responded to each of the tribe's comments in the Response to Comment Document located in the docket.
- *January 19, 2012*—EPA provided an overview to Tribal Historic Preservation Officials (THPOs) of the screening process to be used in the new permit for determining whether stormwater control activities authorized under the permit could affect historic properties.

EPA also notes that as part of the finalization of this permit it has completed Section 401 certification procedures with all applicable tribes where this permit will apply (see Appendix B), with the exception of tribes in Region 5, which, as noted above, are still in the process of completing such certification.

IX. Analysis of Economic Impacts

EPA expects the economic impact on entities covered under this permit, including small businesses, to be minimal. A copy of EPA's economic analysis, titled, ''Economic Analysis: Cost Implications of the 2012 CGP'' is available in the docket for this permit. The economic impact analysis indicates that while there will be some incremental increase in the costs of complying with the new permit, these costs will not have a significant economic impact on a substantial number of small entities. The economic impact analysis is included in the administrative record for this permit.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: February 16, 2012.

H. Curtis Spalding,

Regional Administrator, EPA Region 1.

Dated: February 19, 2012.

José C. Font,

Acting Division Director, Caribbean Environmental Protection Division, EPA Region 2.

Dated: February 16, 2012.

John Filippelli,

Director, Division of Environmental Planning & Protection, EPA Region 2.

Dated: February 16, 2012.

Catherine A. Libertz,

Assistant Director, Water Protection Division, EPA Region 3.

Dated: February 16, 2012.

James D. Giattina,

Director, Water Protection Division, EPA Region 4.

Dated: February 16, 2012.

Tinka G. Hyde,

Director, Water Division, EPA Region 5.

Dated: February 16, 2012.

William K. Honker,

Acting Director, Water Quality Protection Division, EPA Region 6.

Dated: February 16, 2012.

Karen Flournoy,

Director, Water, Wetlands and Pesticides Division, EPA Region 7.

Dated: February 16, 2012.

Melanie L. Pallman,

Acting Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance, EPA Region 8.

Dated: February 16, 2012.

Nancy Woo,

Deputy Director, Water Division, EPA Region 9.

Dated: February 16, 2012.

Michael J. Lidgard,

Director, Office of Water and Watersheds, EPA Region 10.

[FR Doc. 2012–4822 Filed 2–28–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2011–0847; FRL–9641–2]

PCBs Bulk Product v. Remediation Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for Public Comment.

SUMMARY: EPA is seeking comment on a proposed reinterpretation of its position regarding the polychlorinated biphenyl (PCB) disposal regulations regarding PCB bulk product and PCB remediation waste. The proposed reinterpretation is

in response to questions EPA received about the application of particular disposal and cleanup regulatory requirements regarding PCB-contaminated building materials designated for disposal. Please see the epa.gov/pcb web page for further information and for instruction regarding how to submit comments.

DATES: Comments must be received on or before March 30, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2011–0847, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: rcra-docket@epa.gov*, Attention Docket ID No. EPA–HQ–RCRA–2011–0847.
- *Fax:* Comments may be faxed to 202–566–9744, Attention Docket ID No. EPA–HQ–RCRA–2011–0847.
- *Mail:* U.S. Environmental Protection Agency; EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20460, Attention Docket ID EPA–HQ–RCRA–2011–0847. Please include two copies of your submission.
- *Hand Delivery:* Deliver two copies of your submission to Docket ID No. EPA–HQ–RCRA–2011–0847, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–RCRA–2011–0847. EPA's policy is that all submissions 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 submission includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comments. If you send an email directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the submission that is placed in the public docket and made available on the Internet. If you submit an electronic document, EPA recommends that you include your name and other contact information in the body of your submission and with any disk or CD–ROM you submit. If EPA cannot read your submission due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *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 RCRA Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: Molly Finn, Cleanup Programs Branch, Office of Resource Conservation and Recovery, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Mail Code 5303P, Washington, DC 20460; telephone: (703) 347–8785; fax number; 703–308–0509; email address: *ORCRPCBs@epamail.epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

This notice is directed to the public in general, and may be of interest to a wide range of stakeholders, including private citizens, federal, tribal, state and local governments, environmental consulting firms, industry representatives, environmental organizations and other public interest groups. Since others may also be interested, the Agency has not attempted to describe all the specific entities that may have interest in this notice. If you have any questions regarding the applicability of this action to a particular entity, consult the EPA personnel listed under **FOR FURTHER INFORMATION CONTACT**.

The EPA is inviting the public to provide comments on a proposed reinterpretation of its position regarding PCB bulk product and PCB remediation waste under regulations promulgated at 40 CFR part 761. The EPA has opened the docket for public comment for 30 days after publication in the **Federal Register**. Details on how to provide comments to the docket are provided under **ADDRESSES**.

II. Background

EPA has received several questions from the regulated community regarding the disposal and cleanup requirements for PCB-contaminated building materials. The Toxic Substances Control Act (TSCA) regulations at 40 CFR 761 provide disposal and cleanup requirements for PCBs. The disposal and cleanup requirements for PCB-contaminated building material depend on whether the material is classified as PCB bulk product waste or PCB remediation waste.

Waste derived from caulk or paint containing PCBs at ≥ 50 parts per million (ppm) is defined as PCB bulk product waste in 40 CFR 761.3. The definition of PCB bulk product waste includes ''non-liquid bulk wastes or debris from the demolition of buildings and other man-made structures manufactured, coated, or serviced with PCBs.'' Other PCB bulk product wastes may include, but are not limited to, mastics, sealants, or adhesives containing PCBs at ≥ 50 ppm.

PCB remediation waste is defined as ''waste containing PCBs as a result of a spill, release, or other unauthorized disposal * * *'', and leaching may be considered a release of PCBs.

The Agency proposes to reinterpret its position regarding the status of PCB-contaminated building materials under the definition of PCB bulk product waste and is seeking comment on this proposal. In association with this reinterpretation, EPA has identified several guidance documents that would be changed with this proposed reinterpretation if the Agency finalizes this proposal.

EPA believes that this proposed reinterpretation would allow for accelerated cleanups of PCB-contaminated building material by providing a more straightforward path for disposal pursuant to the regulations. Speeding up removal and disposal of the PCB-contaminated material is critical for reducing exposure potential, such as in schools or other locations where such PCB-contaminated building materials are currently in place. The current interpretation of these regulations applies different requirements to PCB-contaminated building materials than to the products

that were originally manufactured with PCBs (e.g., paint or caulk). Labeling the building materials a different type of PCB waste than PCB bulk product waste (e.g., paint or caulk) can result in slower and more costly removal and disposal. This proposed reinterpretation maintains existing environmental and human health protections and removes unnecessary burdens to allow for more expedient cleanups, thus reducing potential exposures, for example, in schools and commercial buildings.

In particular, protecting children's health from environmental risks is fundamental to EPA's mission. Caulks and paints containing PCBs were used in building some schools from 1950 to 1978. The proposed reinterpretation will help to promote healthy school environments by reducing exposure to PCBs in schools.

III. Summary of Proposed Reinterpretation

Current EPA guidance states that building material contaminated by the migration of PCBs from PCB bulk product waste, such as caulk or paint, is considered a PCB remediation waste. The proposed reinterpretation would modify this guidance to specify that only PCB-contaminated building material from which the PCB bulk product has been removed from the substrate is a PCB remediation waste. That is, the distinction lies in whether or not the PCB bulk product is still attached to the building materials.

The reinterpretation being proposed in this notice would allow building material (*i.e.,* substrate) ''coated or serviced'' with PCB bulk product waste (e.g., caulk, paint, mastics, sealants) at the time of disposal to be managed as a PCB bulk product waste, even if the PCBs have migrated from the overlying bulk product waste into the substrate, provided there is no other source of PCB contamination on or in the substrate. However, if the substrate is not ''coated or serviced'' (*i.e.,* the PCB bulk product waste, such as caulk or paint has been removed from the building material) at the time of disposal and the substrate is contaminated with PCBs that have migrated from the bulk product waste (or from another unauthorized disposal), the substrate would be considered a PCB remediation waste. EPA is seeking comment on this proposed reinterpretation in its position.

Finally, we would note that there may be instances where additional hazardous constituents are present and should be considered in making cleanup decisions. In addition, site-specific factors may influence how to manage these PCB wastes. Consideration of these constituents and site-specific factors, and coordination with appropriate regulators is important to ensure safe practices. Therefore, in such situations, we believe that the appropriate EPA regional office and regional PCB coordinator should be consulted as necessary for assistance with making these decisions. For instance, property owners have identified instances where PCB caulk contained high levels of other hazardous constituents, such as asbestos. Similarly, there are cases where PCB paint has been found to contain high levels of leachable metals. In such situations, care must be taken to determine the appropriate disposal option.

Please see the epa.gov/pcb Web page for further information and for instruction regarding how to submit comments. EPA will accept comments for 30 days from the date published in the **Federal Register**.

Dated: February 15, 2012.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste & Emergency Response.

[FR Doc. 2012–4860 Filed 2–28–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0004; FRL–9332–8]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any previously registered pesticide products. Pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before March 30, 2012.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and the file symbol(s) for the product(s) of interest as listed in Unit II., by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID number and the file symbol(s) for the product(s) of interest as listed in Unit II. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only

available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

The Regulatory Action Leader or Product Manager listed in the table in this unit:

Regulatory action leader or product manager	Telephone number and Email address	Mailing address	File symbol
Menyon Adams	(703)347–8496 *adams.menyon@epa.gov*	Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.	84876–R
Gina Burnett	(703)605–0513 *burnett.gina@epa.gov*	Do	51934–RE, 51934–RG, 51934–RL, 51934–RU, 52991–ET
Leonard Cole	(703)305–5412 *cole.leonard@epa.gov*	Do	84889–E
Jeannine Kausch	(703)347–8920 *kausch.jeannine@epa.gov*	Do	88347–R, 88347–E
Mike Mendelsohn	(703)308–8715 *mendelsohn.mike@epa.gov*	Do	29964–RT
Thomas Harris	(703)308–9423 *harris.thomas@epa.gov*	Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.	352–ILA, 352–ILT, 352–ILO, 352–IAN, 352–ILI, 352–IAT, 352–IAE, 352–IAI, 352–IAL, 352–IAG, 352–IAA, 100–RUER, 100–RUEE, 100–RUEG, 100–RUEU, 100–RUEN, 100–RURI

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any previously registered pesticide products. Pursuant to the provisions of section 3(c)(4) of FIFRA, EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by EPA on these applications.

1. *File symbols:* DuPont-352–ILA, 352–ILT, 352–ILO, 352–IAN, 352–ILI, 352–IAT, 352–IAE, 352–IAI, 352–IAL, 352–IAG, and 352–IAA; Syngenta—100–RUER, 100–RUEE, 100–RUEG, 100–RUEU, 100–RUEN, and 100–RURI. *Docket number:* EPA–HQ–OPP–2011–0668. *Applicants:* E.I. du Pont de Nemours & Co., 1007 Market St., Wilmington, DE 19898 and Syngenta Crop Protection LLC, P.O. Box 18300, Greensboro, NC 27419. *Product names:* DuPont—Cyazypyr Technical, Benevia Insect Control, Exirel Insect Control, Verimark Insect Control, Dermacor Z–103 Insecticide Seed Treatment, Dermacor Z–151 Insecticide Seed Treatment, HGW86 Fly Control Bait, HGW86 SC Insect Control, HGW86 T & O Insect Control, HGW86 GH & N Insect Control, and HGW86 Tree Injection Insect Control; Syngenta—A16901B CP

Insecticide, Mainspring Insecticide, A16901B Residential Insecticide, A16901B TURF, A17960A ST Insecticide, and A17960B ST Insecticide. *Active ingredient:* Insecticide with Cyantraniliprole at 0.5—96.7%. *Proposed classification/Use:* Tuberous and corm vegetables (crop subgroup 1C); bulb vegetables (crop group 3–07); leafy vegetables (except brassica vegetables) (crop group 4); brassica (cole) leafy vegetables (crop group 5); fruiting vegetables (crop group 8–10); cucurbit vegetables (crop group 9); citrus fruits (crop group 10–10); pome fruits (crop group 11–10); stone fruits (crop group 12); berries and small fruits, bushberries (crop subgroup 13–07B); tree nuts (crop group 14); oilseeds (crop group 20); processed commodities; animal commodities; turf; ornamentals; residential, commercial, industrial, and agricultural structures. (T. Harris).

2. *File symbol:* 29964–RT. *Docket number:* EPA–HQ–OPP–2011–1015. *Applicant:* Pioneer Hi-Bred International, Inc., P.O. Box 1000, Johnston, IA 50131–1000. *Product name:* 4114 Maize. *Active ingredient:* Plant-Incorporated Protectant with *Bacillus thuringiensis* Cry1F protein and the genetic material (PHP27118 T–DNA) necessary for its production in Event DP–ØØ4114–3 corn and *Bacillus thuringiensis* Cry34Ab1 and Cry35Ab1 proteins and the genetic material (PHP27118 T–DNA) necessary for their production in Event DP–ØØ4114–3 corn at less than 0.1%. *Proposed classification/Use:* Seed increase/breeding use in corn. (M. Mendelsohn).

3. *File symbol:* 51934–RE. *Docket number:* EPA–HQ–OPP–2011–1031. *Applicant:* Trece, Inc., 7569 Hwy. 28 W, Adair, OK 74330. *Product name:* Cidetrak® DA MEC. *Active ingredient:* Mating Disruptant with Ethyl-2E,4Z-Decadienoate at 5.0%. *Proposed classification/Use:* Mating disruptant to control codling moth; as an enhancement to be mixed with insecticides or codling moth *(Cydia pomonella)* pheromone formulations. (G. Burnett).

4. *File symbol:* 51934–RG. *Docket number:* EPA–HQ–OPP–2011–1031. *Applicant:* Trece, Inc., 7569 Hwy. 28 W, Adair, OK 74330. *Product name:* Cidetrak® CMDA 90/60. *Active ingredient:* Mating Disruptant with Ethyl-2E,4Z-Decadienoate at 1.2%. *Proposed classification/Use:* Mating disruptant to control codling moth *(Cydia pomonella)* and hickory shuckworm (*Cydia caryana).* (G. Burnett).

5. *File symbol:* 51934–RL. *Docket number:* EPA–HQ–OPP–2011–1031. *Applicant:* Trece, Inc., 7569 Hwy. 28 W, Adair, OK 74330. *Product name:* Cidetrak® CMDA 185/60. *Active ingredient:* Mating Disruptant with Ethyl-2E,4Z-Decadienoate at 1.2%. *Proposed classification/Use:* Mating disruptant to control codling moth (*Cydia pomonella*) and hickory shuckworm (*Cydia caryana*). (G. Burnett).

6. *File symbol:* 51934–RU. *Docket number:* EPA–HQ–OPP–2011–1031. *Applicant:* Trece, Inc., 7569 Hwy. 28 W, Adair, OK 74330. *Product name:* Cidetrak® CMDA 115/30. *Active ingredient:* Mating Disruptant with Ethyl-2E,4Z-Decadienoate at 0.06%. *Proposed classification/Use:* Mating disruptant to control codling moth (*Cydia pomonella*) and hickory shuckworm (*Cydia caryana*). (G. Burnett).

7. *File symbol:* 52991–ET. *Docket number:* EPA–HQ–OPP–2011–1031. *Applicant:* Bedoukian Research, Inc., 21 Finance Dr., Danbury, CT 06810. *Product name:* Bedoukian Pear Ester Technical. *Active ingredient:* Mating Disruptant with Ethyl-2E,4Z-Decadienoate at 93.4%. *Proposed classification/Use:* Manufacturing use. (G. Burnett).

8. *File symbol:* 84876–R. *Docket number:* EPA–HQ–OPP–2011–1027. *Applicant:* Bert Volger, Authorized Agent, Ceres International LLC, on behalf of Consumo Em Verde S.A., Plant Biotechnology, Technology Park in Cantanhede, Lot 2, 3060–197 Cantanhede, Portugal. *Product name:* PROBLAD PLUS. *Active ingredient:* Fungicide with BLAD (20 kDa Polypeptide of Beta-Conglutin) at 20%. *Proposed classification/Use:* Agricultural use on grapes, strawberries, tomatoes, almonds, stone fruit, and ornamentals. (M. Adams).

9. *File symbol:* 84889–E. *Docket number:* EPA–HQ–OPP–2012–0128. *Applicant:* Rode-Trol LLC, 35801 Rd. 132, Visalia, CA 93292. *Product name:* Rode-Trol. *Active ingredient:* Rodenticide with Cellulose at 40.5%. *Proposed classification/Use:* Rodent control. (L. Cole).

10. *File symbol:* 88347–E. *Docket number:* EPA–HQ–OPP–2011–0862. *Applicant:* Phyllom LLC, 922 San Leandro Ave., Suite F, Mountain View, CA 94043. *Product name:* Phyllom grubGONE! Granular (G). *Active ingredient:* Insecticide with *Bacillus thuringiensis* subsp. *galleriae* strain SDS–502 at 0.6%. *Proposed classification/Use:* For annual white grub control in turf and ornamentals. (J. Kausch).

11. *File symbol:* 88347–R. *Docket number:* EPA–HQ–OPP–2011–0862. *Applicant:* Phyllom LLC, 922 San Leandro Ave., Suite F, Mountain View, CA 94043. *Product name:* Phyllom SDS–502 MP. *Active ingredient:* Insecticide with *Bacillus thuringiensis* subsp. *galleriae* strain SDS–502 at 6.0%. *Proposed classification/Use:* Manufacturing use. (J. Kausch).

List of Subjects

Environmental protection, Pesticides and pest.

Dated: February 16, 2012.

Keith A. Matthews,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2012–4848 Filed 2–28–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0061; FRL–9337–7]

Petition To Demonstrate Paperwork Reduction Act Compliance of the Endocrine Disruptor Screening Program; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is seeking public comment on a December 7, 2011 petition from the Chemical Producers & Distributors Association (CPDA), the Halogenated Solvents Industry Alliance, Inc., and the People for the Ethical Treatment of Animals (PETA). The petition requested that the Agency abide by the Paperwork Reduction Act and Office of Management and Budget Terms of Clearance for the approved Information Collection Request (ICR) of the first list of 67 chemicals to receive orders under the Endocrine Disruptor Screening Program by demonstrating the information being sought has practical utility and is not duplicative before proceeding with Tier 1 screening orders for additional chemicals.

DATES: Comments must be received on or before May 29, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2012–0061, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental

Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr. Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2012–0061. EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr. Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jane Smith, Pesticide Re-Evaluation Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–0048; fax number: (703) 308–8005; email address: *smith.jane-scott@epa.gov*.

SUPPLEMENTARY INFORMATION

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides and other chemical substances; or if you are or may otherwise be involved in the testing of chemical substances for potential endocrine effects. Potentially affected entities identified by the North American Industrial Classification System (NAICS) codes, may include, but are not limited to:

- Chemical manufacturers, importers and processors (NAICS code 325), e.g., persons who manufacture, import or process chemical substances.
- Pesticide, fertilizer, and other agricultural chemical manufacturing (NAICS code 3253), e.g., persons who manufacture, import or process pesticide, fertilizer and agricultural chemicals.
- Scientific research and development services (NAICS code 5417), e.g., persons who conduct testing of chemical substances for endocrine effects.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine section 408(p) of the Federal Food, Drug, and Cosmetic Act (FFDCA). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What action is the agency taking?

In October 2009, the Agency initiated the Endocrine Disruptor Screening Program (EDSP) Tier 1 screening for the first list of 67 chemicals by issuing orders between October 29, 2009, and February 26, 2010, pursuant to the authority provided to EPA under section 408(p)(5) of FFDCA. The orders require the testing of chemicals through 11 Tier 1 screening assays. The purpose of the 11 Tier 1 screening assays is to determine the potential for a chemical

to interact with estrogen, androgen and thyroid hormone systems. Based on the data from the 11 Tier 1 assays, should the determination be made that the chemical is shown to interact, additional Tier 2 testing may be required.

EPA is seeking public comment on a December 6, 2011 petition from the Chemical Producers & Distributors Association (CPDA), the Halogenated Solvents Industry Alliance, Inc., and the People for the Ethical Treatment of Animals (PETA). The petition requested that the Agency abide by the Paperwork Reduction Act and Office of Management and Budget Terms of Clearance for the approved Information Collection Request (ICR) of the first list of 67 chemicals to receive orders under the Endocrine Disruptor Screening Program by demonstrating that the information collected: (1) Has practical utility in that it can distinguish whether a chemical has the potential to interact with the endocrine system or not; (2) has practical utility before proceeding with more Tier 1 screening orders for additional chemicals; and (3) is not duplicative of other information collection activities by the Agency but also is not duplicative of existing information.

B. What is the agency's authority for taking this action?

This action is taken under the authority of FFDCA section 408(p), 21 U.S.C. 346a(d)(3).

List of Subjects

Environmental protection, EDSP, Endocrine Disruptors Screening Program, FFDCA orders, List 1 chemicals, Pesticides.

Dated: February 15, 2012.

Michael Goodis,

Acting Director, Pesticides Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2012–4846 Filed 2–28–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0014; FRL–9336–2]

Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registration has been cancelled only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before August 27, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0014, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

Submit written withdrawal request by mail to: Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. ATTN: Jolene Trujillo.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2010–0014. EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jolene Trujillo, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0103; email address: *trujillo.jolene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. If you have any questions regarding the information in this notice, consult the

person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of requests from registrants to cancel 30 pesticide products registered under FIFRA section 3 or 24(c). These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit.

Unless the Agency determines that there are substantive comments that warrant further review of the requests or the registrants withdraw their requests, EPA intends to issue orders in the **Federal Register** cancelling all of the affected registrations.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Chemical name
000322–00008	Pearson's Rat Poison	Zinc phosphide (Zn3P2).
000577–00539	Semi-transparent Wood Preservative Stain A14T5.	Folpet, Tributyltin oxide.
000577–00544	Cuprinol Stain and Wood Preservative	Tributyltin oxide, Chlorothalonil.
000707–00120	Kathon 4200 Fabric Mildewcide	Octhilinone.
001448–00315	B–7–16	Poly(oxy-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl dichloride).
001529–00029	Nuosept 635–W Preservative	Alkyl amine hydrochloride.
001529–00030	Fungitrol 158 Fungicide	Alkyl* amine hydrochloride *(as in fatty acids of coconut oil), Tributyltin benzoate.
001677–00199	Quantum TB Disinfectant	Caprylic acid.
002829–00127	Vinyzene IT–3000 DIDP	Octhilinone.
002829–00139	Vinyzene DP 7000	Triclosan.
002829–00145	Vinyzene SB–30	Triclosan.
004822–00429	Waste Minders with Stangard/4	Triclosan.
007313–00006	Olympic Clear Wood Preservative	Tributyltin oxide, Folpet.
007364–00022	Algimycin Winter Algicide	Poly(oxy-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl dichloride).
007364–00093	Poolcare Algastop	Poly(oxy-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl(dimethylimino)-1,2-ethanediyl dichloride).
008177–00071	Enterprise Stain & Wood Preservative	Tributyltin oxide, Carbamic acid, butyl-, 3-iodo-2-propynyl ester.
010807–00447	Purge Insecticide	Piperonyl butoxide, Pyrethrins.
035975–00004	Sodium Fluoroacetate (Compound 1080) Livestock Protection Collar..	Sodium Fluoroacetate
047371–00084	Formulation HL–138D	Alkyl* dimethyl benzyl ammonium chloride *(60%C14, 30%C16, 5%C18, 5%C12), Tributyltin oxide.
053883–00259	Termini 9.1 SC	Fipronil.
CO080003	Endura Fungicide	Boscalid.
MD080002	Ridomil Gold Copper	Copper hydroxide D–Alanine, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-, methyl ester.
OR000023	Daconil SDG	Chlorothalonil.
WA000003	Daconil SDG	Chlorothalonil.
WA030013	Thiodan 3 EC Insecticide	Endosulfan.
WA030017	Thionex 50W Insecticide	Endosulfan.
WA030018	Thiodan 3 EC Insecticide	Endosulfan.
WA060006	Outlook Herbicide	dimethenamide-P.
WA060018	Prowl H2O Herbicide	Pendemethalin.
WA860012	Furadan 15 G Insecticide-Nemanticide	Carbofuran.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration

numbers of the products listed in this unit.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA company No.	Company name and address
322	Fort Dodge Chemical Company, P.O. Box 2021, Lompoc, CA 93438.
577	The Sherwin-Williams Co., 101 Prospect Ave., Cleveland, OH 44115.
707	Rohm and Haas Co., 100 S Independence Mall West, STE 1A, Philadelphia, PA 19106.
1448	Buckman Laboratories Inc., 1256 North Mclean Blvd., Memphis, TN 38108.
1529	International Specialty Products, 1361 Alps Rd., Wayne, NJ 07470.
1677	Ecolab Inc., 370 N. Wabasha St., St. Paul, MN 55102.
2829	Rohm and Haas Co., 100 S Independence Mall West, STE 1A, Philadelphia, PA 19106.
4822	S.C. Johnson & Son, Inc., 1525 Howe St., Racine, WI 53403.
7313	PPG Architectural Finishes Inc., 1 PPG Place, Pittsburgh, PA 15272.
7364	GLB Pool & Spa, W175 N11163 Stonewood Dr., Suite 234, Germantown, WI 53022.
8177	The Valspar Corporation, Agent: Lewis & Harrison, LLC, 122 C Street, NW., Suite 740, Washington, DC 20001.
10807	Amrep Inc., 990 Industrial Park Dr., Marietta, GA 30062.
35975	Montana Department of Livestock, P.O. Box 202001, Helena, MT 59620–2001.
47371	H & S Chemical Division, 90 Boroline Rd., Allendale, NJ 07401.
53883	Control Solutions Inc., 5903 Genoa-Red Bluff Rd., Pasadena, TX 77507–1041.
MD080002	Syngenta Crop Protection, LLC, D/B/A Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419–8300.
OR000023; WA000003	GB Biosciences Corporation, 410 Swing Rd., P.O. Box 18300, Greensboro, NC 27419–5458.
WA030013; WA030017; WA030018.	Makhteshim-Agan of North America, Inc., Agent: Pyxis Regulatory Consulting, Inc., 4110 136th St., NW., Gig Harbor, WA 98332.
WA060006; WA060018; CO080003.	BASF Corp. Agricultural Products, 26 Davis Dr., P.O. Box 13528, Research Triangle Park, NC 27709–3528.
WA860012	FMC Corp. Agricultural Products Group, 1735 Market, Room 1978, Philadelphia, PA 19103.

III. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be cancelled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or
2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants in Table 2 of Unit II., have not requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 180-day comment period on the proposed requests.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation should submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Because the Agency has identified no significant potential risk concerns associated with these pesticide products, upon cancellation of the products identified in Table 1 of Unit II., EPA will allow existing stocks provisions as follows:

A. Registrations Listed in Table 1 of Unit II except for No. WA860012

EPA anticipates allowing registrants to sell and distribute existing stocks of these products for 1 year after publication of the Cancellation Order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the pesticides identified in Table 1 of Unit II., except for export consistent with FIFRA section 17 or for proper disposal. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled products.

B. Registration No. WA860012

The effective date of cancellation of this product is the date of publication of the cancellation order in the **Federal Register**. EPA does not intend to allow the continued sale and distribution of existing stocks of this product after the effective date of this cancellation. There are currently no tolerances in effect for any of the food or feed crops associated with the domestic use of carbofuran products, and there have been none since the 2009 tolerance revocations took effect on December 31, 2009, (May 15, 2009, 74 FR 23046) (FRL–8413–3).

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 15, 2012.

Michael Goodis,

Acting Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2012–4678 Filed 2–28–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9640–9]

Request for Public Comments on the List of Candidates for EPA's Science Advisory Board (SAB), Chemical Assessment Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites public comments on the list of candidates being considered for appointment to the EPA's Science Advisory Board (SAB) Chemical Assessment Advisory Committee (CAAC).

DATES: Comments should be submitted in time to arrive no later than March 21, 2012.

FOR FURTHER INFORMATION CONTACT: Members of the public wishing to obtain further information may contact the Dr. Suhair Shallal, the Designated Federal Officer (DFO) for the committee, by email at *shallal.suhair@epa.gov* or by telephone at 202–564–2057.

Background: The U.S. Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announced in a **Federal Register** Notice (Vol. 76, No. 223, pp. 71561–62) published on November 18, 2011 that it was forming a new committee under the auspices of the SAB to provide advice to EPA through the chartered SAB regarding the development of IRIS Toxicological Reviews available on EPA's Integrated Risk Assessment System (IRIS). The SAB Staff Office sought public nominations of nationally and internationally recognized experts with knowledge in human health risk assessment and expertise in a range of disciplines including, but not limited to: *public health; epidemiology; toxicology; modeling; biostatistics; and risk assessment.* The SAB Staff Office hereby invites public comments on the list of candidates under consideration for the SAB Chemical Assessment Advisory Committee.

How To Submit Comments: Any interested person or organization may submit comments to Dr. Suhair Shallal, Designated Federal Officer, no later than March 21, 2012. Emailing comments (*shallal.suhair@epa.gov*) is the preferred mode of receipt. Please be advised that public comments are subject to release under the Freedom of Information Act.

Dated: February 22, 2012.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2012–4841 Filed 2–28–12; 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 April 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 Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0936.

Title: Section 95.1215, Medical Device Radiocommunication Service (MedRadio); Disclosure Policies and Section 95.1217, Labeling Requirements.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities and Not-for-profit institutions.

Number of Respondents: 100 respondents; 100 responses.

Estimated Time per Response: 1 hour for each manufacturer (20 manufacturers).

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 151, and 303 of the Communications Act of 1934, as amended.

Total Annual Burden: 100 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: N/A.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) for approval of a revision. The Commission adopted and released a Report and Order, FCC 11–176, Amendment of Parts 2 and 95 of the Commission's rules to provide additional spectrum for the Medical Device Radiocommunication Service which requires manufacturers of MedRadio programmer/control transmitters shall include the following statement on the device(s) in conspicuous location, or if it is not feasible to place the statement on the device, in the instruction manual.

"This device may not interfere with stations operating in the 400.150–406.000 MHz band in the Meteorological Aids, Meteorological Satellite, and Earth Exploration Satellite Services and must accept any interference received, including interference that may cause undesired operation."

Also section 95.1215(b) was revised as follows for which the Commission also seeks OMB approval:

Manufacturers of MedRadio transmitters operating in the 413–419 MHz, 426–432 MHz, 438–444 MHz, and 451–457 MHz bands must include with

each transmitting device the following statement:

''This transmitter is authorized by rule under the MedRadio Service (47 CFR Part 95). This transmitter must not cause harmful interference to stations authorized to operate on a primary basis in the 413–419 MHz, 426–432 MHz, 438–444 MHz, and 451–457 MHz bands, and must accept interference that may be caused by such stations, including interference that may cause undesired operations. This transmitter shall be used only in accordance with the FCC Rules governing the MedRadio Service. Analog and digital voice communications are prohibited. Although this transmitter has been approved by the Federal Communications Commission, there is no guarantee that it will not receive interference or that any particular transmission from this transmitter will be free from interference.''

MedRadio programmer/control transmitters operating in the 413–419 MHz, 426–432 MHz, 438–444 MHz, and 451–457 MHz bands shall be labeled as provided in part 2 of this chapter and shall bear the following statement in a conspicuous location on the device:

''This device may not interfere with stations authorized to operate on a primary basis in the 413–419 MHz, 426–432 MHz, 438–444 MHz, and 451–457 MHz bands, and must accept any interference received, including interference that may cause undesired operation.''

OMB Control Number: 3060–1085.

Title: Section 9.5, Interconnected Voice Over Internet Protocol (VoIP) E911 Compliance.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities and Not-for-profit institutions.

Number of Respondents: 12 respondents; 14,612,166 responses.

Estimated Time per Response: 0.04012548 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. Sections 151, 154(i)–(j), 251(e) and 303(r) of the Communications Act of 1934, as amended.

Total Annual Burden: 586,320 hours.

Total Annual Cost: $80,235,305.

Privacy Impact Assessment: N/A.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) for approval of an extension (no change in the recordkeeping and/or third party disclosure requirements). This is necessary to obtain the three year OMB approval. There is an adjustment increase of 11,375 burden hours for this submission to OMB. The adjustment is due to recalculation of the previous estimates and an increase in the number of responses. There is no change in the annual cost burden.

On October 7, 2011, the Commission released the *Contributions to the Telephone Relay Services Fund Report and Order*. In addition to providing a systematic way of assessing contributions from non-interconnnected VoIP services providers, the Order also requires interconnected and non-interconnected VoIP services providers to report revenues and subscribership on FCC Form 499–A, Telecommunications Reporting Worksheet. This requirement was approved under OMB control number 3060–0819 on November 7, 2011. The reported data will be used by the Commission to assess monetary contribution requirements on VoIP services providers. The reported data will also provide actual subscriber activity that will improve the accuracy of the estimates used in the supporting statement. The first reports from non-interconnected VoIP services providers are due on April 1, 2012, and will yield more precise subscribership data that will be published for public consumption by early 2014.

The Commission requires providers of interconnected VoIP services to obtain information regarding their end users' location as a condition of providing service.

Interconnected VoIP providers must provide that information to entities that maintain databases used to ensure that the caller's location and a call back number are provided to requesting public safety answering points (PSAPs) when a 911 call is placed. The Commission also requires interconnected VoIP providers to ensure that end users understand the limitations of their service and obtain from the end user evidence of such understanding.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2012–4816 Filed 2–28–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: 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 April 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 Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission, via the Internet at *judith-b.herman@fcc.gov*. To submit your PRA comments by email send them to: *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0859.

Title: Suggested Guidelines for Petitions for Ruling Under Section 253 of the Communications Act of 1934, as amended.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities and State, Local, or Tribal Government.

Number of Respondents: 24 respondents; 24 responses.

Estimated Time per Response: 63 to 125 hours.

Frequency of Response: On occasion reporting requirement.

Obligation To Respond: Voluntary. Statutory authority for this information collection is contained in 47 U.S.C. Section 253 of the Communications Act of 1934, as amended.

Total Annual Burden: 1,698 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: N/A.

Needs and Uses: The Commission will submit this expiring information collection to the OMB after this comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension (with no change in the reporting requirement). There is a reduction in the estimated number of respondents/responses and the annual burden hours because very few requests for preemption pursuant to section 253 have been filed in recent years.

The Commission published a Public Notice in November 1998 which established various guidelines for the filing of petitions for preemption pursuant to section 253 of the Communications Act of 1934, as amended, as well as guidelines for the filing of comments opposing such requests for preemption. The Commission will use this information to discharge its statutory mandate relating to the preemption of state or local statutes, regulations, or other state or local legal requirements.

Section 253 of the Communications Act of 1934, as amended; added by the Telecommunications Act of 1996, requires the Commission, with certain important exceptions, to preempt (to the extent necessary) the enforcement of any state or local statute or regulation, or other state or local legal requirement that prohibits or has the effect of prohibiting any entity from providing any interstate or intrastate telecommunications service. The Commission's consideration of preemption under section 253 typically begins with the filing of a petition by an aggrieved party. The Commission typically places such petitions on public notice and requests comment by interested parties. The Commission's decision is based on the public record, generally composed of the petition and comments. The Commission has considered a number of preemption items since the passage of the Telecommunications Act of 1996, and believes it is the public interest to inform the public of the information necessary for full consideration of the issues likely to be involved in section 253 preemption actions. In order to render a timely and informed decision, the Commission expects petitioners and commenters to provide it with relevant information sufficient to describe the legal regime involved in the controversy and to provide the factual information necessary for a decision.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2012–4817 Filed 2–28–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012067–005.

Title: U.S. Supplemental Agreement to HLC Agreement.

Parties: BBC Chartering & Logistics GmbH & Co. KG; Beluga Chartering GmbH; Chipolbrok; Clipper Project Ltd.; Hyndai Merchant Marine Co., Ltd.; Industrial Maritime Carriers, L.L.C.; Nordana Line A/S; and Rickmers-Linie GmbH & Cie. KG.

Filing Party: Wade S. Hooker, Esq.; 211 Central Park W, New York, NY 10024.

Synopsis: The adds Peter Dohle Schiffahrts KG as party to the HLC Agreement.

Agreement No.: 012157.

Title: CSCL/CMA CGM Slot Exchange Agreement Asia—U.S. East Coast.

Parties: China Shipping Container Lines Co., Ltd., China Shipping Container Lines (Hong Kong) Co., Ltd., and CMA CGM S.A.

Filing Party: Tara L. Leiter, Esquire; Blank Rome LLP; 600 New Hampshire Avenue NW.; Washington, DC 20037.

Synopsis: The agreement authorizes China Shipping and CMA to charter slots to each other on their vessels in the trade between the U.S. East and Gulf Coasts and Asia.

By Order of the Federal Maritime Commission.

Dated: February 24, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–4858 Filed 2–28–12; 8:45 am]

BILLING CODE 6730–01–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 March 15, 2012.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President), 33 Liberty Street, New York, New York 10045–0001:

1. *Danske Bank A/S,* Copenhagen, Denmark; to engage *de novo* through its subsidiary, Danske Markets Inc., New York, New York, in securities brokerage

activities, pursuant to section 225.28(b)(7)(i).

Board of Governors of the Federal Reserve System, February 24, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–4815 Filed 2–28–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0382; 30-day Notice]

Agency Information Collection Request; 30-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 collection 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) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer, faxed to OMB at 202–395–5806.

Proposed Project: Evaluation of Pregnancy Prevention Approaches: Follow-Up Data Collection—Revision—OMB No. 0990–0382—Office of Adolescent Health.

Abstract: The Office of Adolescent Health (OAH), Office of the Assistant Secretary for Health (OASH), U.S. Department of Health and Human Services (HHS), is requesting approval by OMB on a revised data collection. OAH is overseeing and coordinating adolescent pregnancy prevention evaluation efforts as part of the Teen Pregnancy Prevention Initiative. OAH is working collaboratively with the Office of the Assistant Secretary for Planning and Evaluation (ASPE), the Centers for Disease Control and Prevention (CDC), and the Administration for Children and Families (ACF) on adolescent pregnancy prevention evaluation activities.

OAH is overseeing the Pregnancy Prevention Approaches Evaluation (PPA). The PPA Evaluation is a random assignment evaluation, which will expand available evidence on effective ways to reduce teen pregnancy. The evaluation will document and test a range of pregnancy prevention approaches in up to seven program sites. The findings from this evaluation will be of interest to the general public, to policy-makers, and to organizations interested in teen pregnancy prevention.

OAH is proposing a data collection activity as part of the PPA Evaluation. The proposed activity involves the collection of follow-up data from a self-administered questionnaire, which will be analyzed to determine program effects. Through a survey instrument, respondents will be asked to answer carefully selected questions about demographics and risk and protective factors related to teen pregnancy. Respondents: The data will be collected through private, phone-administered questionnaires with study participants, i.e. adolescents assigned to a select school or community teen pregnancy prevention program or control group. Trained professional staff will administer a paper and pencil survey over the phone.

ESTIMATED ANNUALIZED BURDEN TABLE

Site/program	Type of respondent	Annualized number respondents	Number of responses per respondent	Average burden hours per response (fraction of an hour)	Total burden hours (annual)
Chicago Public Schools/Health Teacher.	Participating Youth and Control Group Youth.	1308	1	36/60	785
OhioHealth/T.O.P.P.:					
6 months	Participating Youth and Control Group Youth.	170	1	42/60	119
18 months	Participating Youth and Control Group Youth.	164	1	42/60	115
Children's Hospital of Los Angeles/ Project AIM.	Participating Youth and Control Group Youth.	453	1	36/60	272
Oklahoma Institute of Child Advocacy/Power Through Choices:					
Immediate post-test	Participating Youth and Control Group Youth.	306	1	36/60	184
6 month follow-up	Participating Youth and Control Group Youth.	306	1	36/60	184
EngenderHealth	Participating Youth and Control Group Youth.	319	1	36/60	191
Live the Life Ministries/WAIT Training.	Participating Youth and Control Group Youth.	453	1	42/60	317
Princeton Center for Leadership Training (PCLT)/TeenPEP.	Participating Youth and Control Group Youth.	453	1	36/60	272
Total		3,932* (2,012)			2,439* (1,286)

ESTIMATED ANNUALIZED BURDEN TABLE—Continued

Site/program	Type of respondent	Annualized number respondents	Number of responses per respondent	Average burden hours per response (fraction of an hour)	Total burden hours (annual)
Second Follow-up					
Chicago Public Schools/Health Teacher.	Participating Youth and Control Group Youth.	1231	1	36/60	739
OhioHealth/T.O.P.P.	Participating Youth and Control Group Youth.	160	1	42/60	112
Children's Hospital of Los Angeles/ Project AIM.	Participating Youth and Control Group Youth.	427	1	36/60	256
Oklahoma Institute of Child Advocacy/Power Through Choices.	Participating Youth and Control Group Youth.	288	1	36/60	173
Engender Health/Gender Matters	Participating Youth and Control Group Youth.	300	1	36/60	180
Live the Life Ministries/WAIT Training.	Participating Youth and Control Group Youth.	427	1	42/60	299
Princeton Center for Leadership Training (PCLT)/TeenPEP.	Participating Youth and Control Group Youth.	427	1	36/60	256
Total		3,260			2,015

* Includes estimates for Chicago and Oklahoma (n = 1920; hours = 1153), which were included in a previous submission (approval received September 27, 2011).

Keith A. Tucker,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2012–4830 Filed 2–28–12; 8:45 am]

BILLING CODE 4150–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Committee Meetings, President's Committee for People With Intellectual Disabilities (PCPID)

AGENCY: President's Committee for People with Intellectual Disabilities, ACF, HHS.

ACTION: Notice of Committee Meetings.

DATES: Friday, April 6, 2012, from 1 p.m. to 2:30 p.m. EST, via audio conferencing. Thursday, May 17, 2012, from 8 a.m. to 5 p.m.; and Friday, May 18, 2012 from 8:30 a.m. to 5 p.m. EST, face-to-face meeting. All meetings will be open to the public.

Details for public access to the April 6th Committee Conference Call are cited below:

Toll Free Dial-In Number: 888–989–0724.

Pass Code: 1939592.

ADDRESSES: The May 17th-18th PCPID Meeting will be held in Conference Room 505–A of the Hubert H. Humphrey Building, U.S. Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201. Individuals who would like to participate via conference call may do so by dialing 888–989–0724, pass code: 1939592. Individuals whose full participation in the meeting will require special accommodations (e.g., sign language interpreting services, assistive listening devices, materials in alternative format such as large print or Braille) should notify PCPID Executive Administrative Assistant, Genevieve Swift, via email at *Edith.Swift@acf.hhs.gov,* or via telephone at 202–619–0634. Special accommodations needed for the April 6th Committee Conference Call, must be received no later than Friday, March 30, 2012. Special accommodations needed for the May 17th–18th PCPID Meeting, must be received no later than Monday, May 7, 2012. PCPID will attempt to meet requests for accommodations made after that date, but cannot guarantee ability to grant requests received after this deadline. All meeting sites are barrier free, consistent with the Americans with Disabilities Act (ADA), and the Federal Advisory Committee Act (FACA).

Agenda: Discussion plans for developing the PCPID 2012 Report to the President.

Additional Information: For further information, please contact Laverdia Taylor Roach, Senior Advisor, President's Committee for People with Intellectual Disabilities, The Aerospace Center, Second Floor West, 370 L'Enfant Promenade SW., Washington, DC 20447. Telephone: 202–619–0634. Fax: 202–205–9519. Email: *Laverdia.Roach@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: PCPID acts in an advisory capacity to the President and the Secretary of Health and Human Services, through the Administration on Developmental Disabilities, on a broad range of topics relating to programs, services, and supports for persons with intellectual disabilities. The PCPID Executive Order stipulates that the Committee shall: (1) Provide such advice concerning intellectual disabilities as the President or the Secretary of Health and Human Services may request; and (2) provide advice to the President concerning the following for people with intellectual disabilities: (a) Expansion of educational opportunities; (b) promotion of homeownership; (c) assurance of workplace integration; (d) improvement of transportation options; (e) expansion of full access to community living; and (f) increasing access to assistive and universally designed technologies.

Dated: February 22, 2012.

Jamie Kendall,

Deputy Commissioner, Administration on Developmental Disabilities.

[FR Doc. 2012–4829 Filed 2–28–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0176]

Agency Information Collection Activities; Proposed Collection; Comment Request; Experimental Study: Examination of Corrective Direct-to-Consumer Television Advertising

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on research entitled ''Experimental Study: Examination of Corrective Direct-to-Consumer (DTC) Television Advertising.'' The proposed research will examine how corrective advertising may impact consumer misperceptions about prescription drug product safety and efficacy.

DATES: Submit either electronic or written comments on the collection of information by April 30, 2012.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *juanmanuel.vilela@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Experimental Study: Examination of Corrective DTC Television Advertising

I. Regulatory Background

Section 1701(a)(4) of the Public Health Service Act (42 CFR 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 903(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 393(d)(2)(C)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

II. Description

FDA regulations require prescription drug advertisements to contain accurate information about the benefits and risks of the drug advertised. When this is not the case, corrective advertising is designed to dissipate or correct erroneous beliefs resulting from a false claim (Refs. 1 and 2). Corrective advertising emerged in public debate in the United States in the 1970s as a hypothetical remedy for deceptive advertising, having first been proposed by Georgetown University law students in 1969 as a way of dispelling the effects of deceptive advertising (Ref. 3). Corrective advertising is one remedy FDA may request in response to false or misleading prescription drug promotion. In 2009, for example, Bayer HealthCare Pharmaceuticals produced and aired corrective DTC advertising for Yaz, a birth control pill, following a warning from FDA regarding misleading claims (Ref. 4). Despite these developments, researchers and policymakers currently lack exhaustive empirical literature regarding the various impacts of corrective DTC advertisements on prescription drug consumers. The current project will examine how variations in corrective advertising may impact consumers' misleading product beliefs.

III. Design and Method Overview

The study will involve three independent variables: Message exposure, similarity of original and corrective ads, and length of time between exposure to original and corrective ad in a medium prevalence medical condition (defined as between 5 percent and 10 percent of U.S. adult population). These variables will be examined in two phases. Participants will be recruited from an online Internet panel and will answer the survey questions online.

Phase 1 will vary the exposure to the messages (original ad alone versus original + corrective versus corrective ad alone). The goal of Phase 1 is to examine how exposure to a combination of original and corrective DTC advertisements affects message recall, message comprehension, perceived drug efficacy, perceived drug risk, and intentions to ask about or use the drug. Specifically, we will compare consumers who see both the original and corrective ad with those who see only the original ad, only the corrective ad, and neither ad.

TABLE 1—DESIGN OF PHASE 1: ORIGINAL EXPOSURE BY CORRECTIVE EXPOSURE

Exposure to Original ad	Exposure to Corrective ad	
	Yes	No
Yes	.....	(filler task only)
No	.....	

Phase 2 will examine the similarity of the corrective ad's theme and visual elements to those of the original ad (same ad elements versus some similar ad elements versus different ad elements) and the exposure delay (time) between viewing the original ad and the corrective ad (no delay versus 1 week delay versus 1 month delay). The purpose of Phase 2 is to examine whether a corrective advertisement's

ability to correct misinformation is related to (a) corrective ad similarity to the original ad and (b) time delay between original ad and corrective ad exposure.

We will vary these two characteristics to create a study with a 4x3 experimental design (see table 2).

TABLE 2—DESIGN OF PHASE 2: AD SIMILARITY BY EXPOSURE DELAY

Corrective ad similarity	Exposure delay		
	None	1 Week	1 Month
Same ad elements			
Some similar elements			
Different ad elements			
Control (Do not see corrective)			

Prior to conducting the main study, we will pretest the stimuli, questionnaires, and data collection process. The first set of pretests will focus on the stimuli, and its purpose will be to (a) ensure the stimuli display properly, (b) ensure participants perceive the stimuli as realistic, and (c) ensure participants notice the original and corrective messages in the ads. The second pretest will focus on the questionnaires and data collection process. Its purpose will be to (a) ensure that survey questions solicit responses that meet the study's analytic goals and (b) ensure data are captured and stored accurately for each question.

FDA estimates the burden of this collection of information as follows: 30 minutes in the pretests and each phase of the study, for a burden of 3,092 hours. This will be a one time (rather than annual) collection of information. The questionnaire is available upon request.

TABLE 3—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	No. of respondents	No. of responses per respondent	Total annual responses	Average burden per response	Total hours
Pretests	1,250	1	1,250	0.5 (30 minutes)	625
Phase 1 Screener	3,228	1	3,228	0.033 (2 minutes)	108
Phase 1	1,000	1	1,000	0.5 (30 minutes)	500
Phase 2 Screener	10,768	1	10,768	0.033 (2 minutes)	359
Phase 2	3,000	1	3,000	0.5 (30 minutes)	1,500
Total	19,246				3,092

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

IV. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Darke, P.R., L. Ashworth, and R.J.B. Ritchie, ''Damage From Corrective Advertising: Causes and Cures,'' *Journal of Marketing,* vol. 72, pp. 81–97, 2008.

2. Mazis, M.B. and J.E. Adkinson, ''An Experimental Evaluation of a Proposed Corrective Advertising Remedy,'' *Journal of Marketing Research,* vol. 13, pp. 178–183, 1976.

3. Mazis, M.B., D.L. McNeill, and K.L. Bernhardt, ''Day-After Recall of Listerine Corrective Commercials,'' *Journal of Public Policy & Marketing,* vol. 2, pp. 29–37, 1983.

4. Singer, N., *A Birth Control Pill That Promised Too Much,* New York Times, February 11, 2009, p. B1.

Dated: February 23, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–4777 Filed 2–28–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0797]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; State Enforcement Notifications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 30, 2012.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0275. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, II, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

State Enforcement Notifications—21 CFR 100.2(d) (OMB Control Number 0910–0275)—Extension

Section 310(b) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 337(b)) authorizes States to

enforce certain sections of the FD&C Act in their own names, but provides that States must notify FDA before doing so. Section 100.2(d) (21 CFR 100.2(d)) sets forth the information that a State must provide to FDA in a letter of notification when it intends to take enforcement action under the FD&C Act against a particular food located in the State. The information required under § 100.2(d) will enable FDA to identify the food against which the State intends to take action and advise the State whether Federal action has been taken against it. With certain narrow exceptions, Federal enforcement action precludes State action under the FD&C Act.

In the **Federal Register** of November 9, 2011 (76 FR 69742), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
100.2(d)	1	1	1	10	10

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated reporting burden for § 100.2(d) is minimal because enforcement notifications are seldom used by States. During the last 3 years, FDA has not received any new enforcement notifications; therefore, the Agency estimates that one or fewer notifications will be submitted annually. Although FDA has not received any new enforcement notifications in the last 3 years, it believes these information collection provisions should be extended to provide for the potential future need of a State government to submit enforcement notifications informing FDA when it intends to take enforcement action under the FD&C Act against a particular food located in the State.

Dated: February 23, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–4776 Filed 2–28–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–P–0558]

Determination That PHENURONE (Phenacemide) Tablet, 500 Milligrams, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that PHENURONE (phenacemide) Tablet, 500 milligrams (mg), was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for phenacemide tablet, 500 mg, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Howard P. Muller, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6234, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

PHENURONE (phenacemide) Tablet, 500 mg, is the subject of NDA 007707, held by Abbott Laboratories, and initially approved on June 28, 1951. PHENURONE is an oral anticonvulsant indicated for the treatment of epilepsy.

In a letter dated May 14, 2003, Abbott Laboratories requested withdrawal of NDA 007707 for PHENURONE (phenacemide) Tablet. In the **Federal Register** of May 5, 2004 (69 FR 25124), FDA announced that it was withdrawing approval of NDA 007707, effective June 4, 2004.

Schiff & Company submitted a citizen petition dated October 16, 2008 (Docket No. FDA–2008–P–0558), under 21 CFR 10.30, requesting that the Agency determine whether PHENURONE (phenacemide) Tablet, 500 mg, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records, FDA has determined under § 314.161 that PHENURONE (phenacemide) Tablet, 500 mg, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that PHENURONE (phenacemide) tablet, 500 mg, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of

PHENURONE (phenacemide) Tablet, 500 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list PHENURONE (phenacemide) Tablet, 500 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to PHENURONE (phenacemide) Tablet, 500 mg, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: February 23, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–4783 Filed 2–28–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–1978–N–0441] (formerly 78N–0324); DESI 10392]

Drugs for Human Use; Drug Efficacy Study Implementation; Prescription Drugs That Contained Hydroxyzine Hydrochloride or Hydroxyzine Pamoate; Final Resolution of Docket

ACTION: Notice; withdrawal of a hearing request.

SUMMARY: The Food and Drug Administration (FDA) is announcing that all outstanding hearing requests pertaining to Docket FDA–1978–N–0441 (formerly 78N–0324) have been withdrawn. Therefore, shipment in interstate commerce of any of the products identified in that docket, or any identical, related, or similar (IRS) product that is not the subject of an approved new drug application (NDA) or abbreviated new drug application (ANDA) (other than an over-the-counter (OTC) product that complies with an applicable OTC monograph), is unlawful as of the effective date of this notice.

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

ADDRESSES: All communications in response to this notice should be identified with the docket number found in brackets in the heading of this document, and directed to Pamela Lee, Office of Unapproved Drugs and Labeling Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5173, Silver Spring, MD 20993–0002.

FOR FURTHER INFORMATION CONTACT: Pamela Lee, Office of Unapproved Drugs and Labeling Compliance, Office of Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5173, Silver Spring, MD 20993–0002, 301–796–3297, email: *pamela.lee@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

When initially enacted in 1938, the Federal Food, Drug, and Cosmetic Act (the FD&C Act) required that ''new drugs'' be approved for safety by FDA before they could legally be sold in interstate commerce.[1] To this end, the FD&C Act made it the sponsor's responsibility, before marketing a new drug, to submit an NDA to FDA to prove that its drug was safe. Between 1938 and 1962, if a drug obtained approval, FDA considered drugs that were IRS [2] to the approved drug to be ''covered'' by that approval, and allowed those IRS drugs to be marketed without independent approval.

In 1962, Congress amended the FD&C Act to require that new drugs be proven effective for their labeled indications, as well as safe, to obtain FDA approval. This amendment also caused FDA to conduct a retrospective evaluation of the effectiveness of the drug products that FDA had approved as safe between 1938 and 1962. FDA contracted with the National Academy of Sciences/National Research Council (NAS/NRC) to make an initial evaluation of the effectiveness of over 3,400 products that had been approved only for safety between 1938 and 1962. The NAS/NRC reports for these drug products were submitted to FDA in the late 1960s and early 1970s. The Agency reviewed and re-evaluated the reports and published its findings in **Federal Register** notices. FDA's administrative implementation of the NAS/NRC reports was called the Drug Efficacy Study Implementation (DESI). DESI covered the approximately 3,400 products specifically reviewed by the NAS/NRC, as well as the even larger number of IRS products that entered the market without FDA approval.

All drugs covered by the DESI review are ''new drugs'' under the FD&C Act. If FDA's final DESI determination classifies a drug product as lacking substantial evidence of effectiveness for one or more indications, that drug product and those IRS to it may no longer be marketed for the indications and are subject to enforcement action as unapproved new drugs. If FDA's final DESI determination classifies the drug product as effective for one or more of its labeled indications, the drug can be marketed for those indications, provided it is the subject of an application approved for safety and effectiveness. Sponsors of drug products that have been found to be effective for one or more indications through the DESI process may rely on FDA's effectiveness determinations, but typically must update their labeling to conform to the indication(s) found to be effective by FDA and include any additional safety information required by FDA. Those drug products with NDAs approved before 1962 for safety therefore require approved supplements to their original applications if one or more indications are found to be effective under DESI; IRS drug products require an approved NDA or ANDA, as appropriate. Furthermore, labeling for drug products classified as effective may contain only those indications for which the review found the product effective, unless the firm marketing the product has received an approval for the additional indication(s).

II. Docket No. FDA–1978–N–0441 (formerly 78N–0324); DESI 10392

Under Docket No. FDA–1978–N–0441 (formerly 78N–0324), FDA evaluated the evidence of effectiveness for various indications for Atarax Tablets (NDA 10–392), Atarax Syrup (NDA 10–485), Vistaril Injection (NDA 11–111), Vistaril Capsules (NDA 11–459), and Vistaril Oral Suspension (NDA 11–795), products owned by Pfizer, Inc. (Pfizer),

[1] A ''new drug'' is defined by the FD&C Act as a drug that ''is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof, except that such a drug not so recognized shall not be deemed to be a 'new drug' if at any time prior to the enactment of this Act it was subject to the Food and Drugs Act of June 30, 1906, as amended, and if at such time its labeling contained the same representations concerning the conditions of its use * * *.'' (21 U.S.C. 321(p)).

[2] Section 310.6(b)(1) ((21 CFR 310.6(b)(1)) provides: ''An identical, related, or similar drug includes other brands, potencies, dosage forms, salts, and esters of the same drug moiety as well as of any drug moiety related in chemical structure or known pharmacological properties.''

and B. Roerig & Co., then a division of Pfizer, that contained hydroxyzine hydrochloride and hydroxyzine pamoate (44 FR 6780, February 2, 1979) (the February 1979 **Federal Register** notice). Although some indications for these products were found to be supported by adequate and well-controlled clinical studies, other indications were determined to be lacking substantial evidence of effectiveness (Id.). The February 1979 **Federal Register** notice offered an opportunity for hearing with respect to the indications found to be lacking substantial evidence of effectiveness, as well as with respect to any issues relating to the legal status of the drug products subject to it.

In response to the February 1979 **Federal Register** notice, Pfizer requested a hearing. No other companies requested a hearing. On November 22, 2010, FDA sent a letter to Pfizer to determine whether Pfizer remained interested in pursuing its hearing request. On December 22, 2010, Pfizer responded by withdrawing its hearing request. There are no longer outstanding hearing requests pertaining to Docket No. FDA–1978–N–0441 (formerly 78N–0324). Therefore, shipment in interstate commerce of any product identified in this docket, or any IRS product, that is not the subject of an approved NDA or ANDA is unlawful as of the effective date of this notice. This notice is not applicable to OTC products that comply with an OTC monograph (21 CFR 310.6(f)). Any person who wishes to determine whether a specific product is covered by this notice should write to the Center for Drug Evaluation and Research (see ADDRESSES).

III. Discontinued Products

Some firms may have previously discontinued the manufacturing or distribution of products covered by this notice without removing them from the listing of their products under section 510(j) of the FD&C Act (21 U.S.C. 360(j)). Other firms may discontinue manufacturing or marketing listed products in response to this notice. Firms that wish to notify the Agency of product discontinuation should send a letter, signed by the firm's chief executive officer, fully identifying the discontinued product(s), including National Drug Code (NDC) number(s), and stating that the product(s) have been discontinued. The letter should be sent to Pamela Lee (see **ADDRESSES**).

Firms should also update the listing of their products under section 510(j) of the FD&C Act to reflect discontinuation of unapproved products. FDA plans to rely on its existing records, including drug listing records or other available information, when it targets violations for enforcement action. Firms should be aware that after the effective date of this notice, FDA intends to take enforcement action without further notice against any firm that manufactures or ships in interstate commerce any unapproved product covered by this notice.

IV. Reformulated Products

FDA cautions firms against reformulating products into OTC products or different unapproved new drugs that are marketed under the same name or substantially the same name (including a new name that contains the old name). Reformulated products marketed under a name previously identified with a different active ingredient or combination of active ingredients have the potential to confuse health care practitioners and harm patients.

This notice is issued under the FD&C Act (sections 502 and 505 (21 U.S.C. 352 and 355)), and under authority delegated to the Deputy Commissioner for Policy under section 1410.10 of the FDA Staff Manual Guide.

Dated: February 17, 2012.

David Dorsey,

Acting Associate Commissioner for Policy and Planning.

[FR Doc. 2012–4781 Filed 2–28–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0024]

Guidance for Industry on Size of Beads in Drug Products Labeled for Sprinkle; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Size of Beads in Drug Products Labeled for Sprinkle.'' This guidance provides applicants preparing or submitting new drug applications (NDAs), abbreviated new drug applications (ANDAs), and biologics licensing applications (BLAs) the Center for Drug Evaluation and Research's (CDER's) current thinking on appropriate size ranges for beads in drug products that are labeled to be administered via sprinkling (e.g., capsules or packets containing beads).

In the **Federal Register** of January 19, 2011 (76 FR 3144), FDA announced the availability of the draft version of this guidance. The public comment period closed on April 19, 2011. A number of comments were received from the public, all of which the Agency considered carefully as it finalized the guidance and made appropriate changes.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Laurie Muldowney, Center for Drug Evaluation and Research, Food and Drug Administration, Bldg. 51, rm. 4154, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1571.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Size of Beads in Drug Products Labeled for Sprinkle.'' This guidance provides applicants preparing or submitting NDAs, ANDAs, and BLAs CDER's current thinking on appropriate size ranges for beads in drug products that are labeled to be administered via sprinkling (e.g., capsules or packets containing beads).

Certain drug products that contain beads within a capsule indicate in the labeling that the capsule can be broken and the internal beads can be sprinkled on soft foods and swallowed without chewing as an alternative administration technique. This is particularly common with drug products designed to have extended- or delayed-release characteristics (i.e., the beads are manufactured to release the drug product at different rates). To make certain that the intended product performance is achieved—whether from a capsule that has been broken or from

a packet containing beads—it is important to have reasonable assurance that the patient will be able to swallow the beads (uncrushed) with the food with which the beads are mixed without stimulating the urge to chew. Additional assurances may be needed when the label also includes specific language concerning alternate administration via an enteral feeding tube.

The recommendations in this guidance are based on literature on chewing and swallowing particle size and on Agency experience with NDAs and ANDAs submitted for these dosage forms. This guidance provides the following information related to drug products labeled for sprinkle: Appropriate maximum size for the beads, special considerations for sprinkle drug products that include language in labeling concerning alternate administration via an enteral feeding tube, and bioavailability (BA) or bioequivalence (BE) recommendations.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on the size of beads in drug products labeled for sprinkle. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Information submitted in an NDA, ANDA, or BLA supporting the appropriate size for beads in drug products that are labeled to be administered via sprinkling, including related BA and BE studies, is approved by OMB under control number 0910–0001 for NDAs and ANDAs and control number 0910–0338 for BLAs.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: February 23, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–4784 Filed 2–28–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0130]

Electronic Submission of Nonclinical Study Data; Notice of Pilot Project

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) Center for Biologics Evaluation and Research (CBER) is announcing an invitation to participate in a pilot evaluation program to test the electronic submission of nonclinical study data using the Standard for Exchange of Nonclinical Data (SEND), a new electronic data standard format, which can be used to support review activity. Participation in the pilot program is open to all sponsors. The pilot program is intended to provide industry and CBER regulatory review staff the opportunity to evaluate SEND and determine if it facilitates the submission process of nonclinical study data related to investigational new drug applications (INDs).

DATES: Submit either electronic or written requests for participation in this pilot program by May 29, 2012.

ADDRESSES: Submit electronic requests to participate in the pilot and comments regarding the project to *http://www.regulations.gov*. Submit written requests and comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Amy Malla, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6085, email: *Amy.Malla@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

CBER regulates certain biological products and is committed to advancing the public health through innovative activities that help ensure the safety, effectiveness and timely delivery of these products to patients. Further, CBER seeks to continuously enhance and update review efficiency and quality, and the quality of its regulatory efforts and interactions, by providing CBER staff and industry with improved processes. In support of this goal, CBER has participated in the development of the Clinical Data Interchange Standards Consortium (CDISC) SEND, a data model initially developed for nonclinical data from animal studies submitted in support of applications for approval of human drugs. This pilot is designed to test the ability of SEND to support the review of nonclinical study data submitted to CBER. The ultimate goal of the pilot is to replace the existing paper and portable document format (PDF)-based listings of nonclinical study data.

SEND was developed by the CDISC SEND Team. CDISC is an open, multidisciplinary, nonprofit organization that has established worldwide industry standards to support the electronic acquisition, exchange, submission, and archiving of clinical trial data and metadata for medical and biopharmaceutical product development (*http://www.cdisc.org*). Where possible, the standards developed for clinical datasets and metadata, as described in the overall Study Data Tabulation Model (SDTM), are being used to develop a standardized format for nonclinical studies.

Recently, CBER has adopted a standard for clinical study data based on the CDISC SDTM standard. FDA believes the use of standardized SEND datasets, together with new and better analysis tools, will enhance CBER's review and evaluation of nonclinical data.

The Center for Drug Evaluation and Research (CDER) completed a pilot project (phase 1) using the SEND format in sample nonclinical datasets, that is outside of a regulatory setting (68 FR 3885, January 27, 2003). The phase 1 CDER pilot also evaluated data validation and analysis tools specifically designed to validate datasets according to the current SEND standard and to enable a reviewer to display and evaluate data efficiently

from animal studies submitted in the SEND format. The pilot resulted in the development of a SEND Implementation Guide (SENDIG) describing the process for formatting data from single- and repeat-dose animal toxicity and carcinogenicity studies for submission purposes. Following the phase 1 pilot, CDER announced a second pilot (phase 2) to test SEND formatted datasets in a regulatory setting (72 FR 56363, October 3, 2007). The phase 2 pilot was aimed at evaluating animal toxicity data submitted in SEND format in a regulatory setting by comparing SEND-formatted data provided electronically as SAS transport file (XPT version 5) datasets with data provided in PDF.

CBER currently receives nonclinical study data in paper, PDF, and other electronic formats. The lack of uniformity in the formats used by sponsors to submit data, in addition to the inconsistent use of terminology across submissions, complicates CBER's efforts to validate, display, and evaluate the data using modern computer-based review and analysis tools. As part of FDA's effort to modernize its information technology systems and improve efficiency, CBER is planning to transition to an electronic data format for submission of study data for regulatory review.

II. Pilot Project Description

This pilot is intended to help CBER evaluate the adequacy of the current SEND format (SAS transport files, XPT version 5) in accommodating nonclinical study data submitted to the center. As part of this evaluation and in anticipation of FDA receiving datasets for regulatory review, the CDISC SEND team, in collaboration with FDA and available pilot participants, will update the SENDIG as needed to include biologic-specific data elements and terms.

III. Requests for Participation

Requests to participate in the SEND pilot are to be identified with the docket number found in brackets in the heading of this document. You should include the following information in your request: Contact name, contact phone number, email address, name of the establishment, address, and license number. Once requests for participation are received, FDA will contact interested establishments to discuss the pilot program. CBER is seeking a limited number of sponsors (approximately three to five, but no more than six) to participate in this pilot. The duration of the pilot is expected to be approximately 12 months but may be extended as needed. A familiarity with SEND would benefit participants but is not required for participation in the project. Participants should be willing to provide the same nonclinical study data in both paper format and SEND electronic format using SAS transport files (XPT version 5). Participation in this pilot will be outside the regulatory pathway and as such will not be used to make regulatory decisions.

We anticipate that a successful pilot program, including the implementation of any needed changes to the SENDIG and/or data validation, viewing and analysis tools, will allow CBER to accept specific types of nonclinical study data electronically based on the SEND format.

Dated: February 23, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–4785 Filed 2–28–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Food Labeling Workshop; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA), Office of Regulatory Affairs (ORA), Dallas District Office (DALDO), in collaboration with Oklahoma State University (OSU), Robert M. Kerr Food & Agricultural Products Center (FAPC), is announcing a public workshop entitled ''Food Labeling Workshop.'' This public workshop is intended to provide information about FDA food labeling regulations and other related subjects to the regulated industry, particularly small businesses and startups.

Date and Time: This public workshop will be held on April 24 and 25, 2012, from 8 a.m. to 5 p.m.

Location: This public workshop will be held at FAPC, OSU, 148 FAPC, Stillwater, OK 74078–6055.

Contact: David Arvelo, Office of Regulatory Affairs, Food and Drug Administration, Southwest Regional Office, 4040 North Central Expressway, Suite 900, Dallas, TX 75204, 214–253–4952, FAX: 214–253–4970, email: *david.arvelo@fda.hhs.gov*.

For information on accommodation options, contact conference coordinators Karen Smith or Andrea Graves at FAPC, OSU, 148 FAPC, Stillwater, OK 74078–6055, 405–744–6071, FAX: 405–744–6313, or email: *karenl.smith@okstate.edu* or *andrea.graves@okstate.edu*. More information is also available online at *http://www.fapc.biz/foodlabeling.html*. (FDA has verified the Web site address, but we are not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

Registration: You are encouraged to register by April 10, 2012. The workshop has a $400 registration fee to cover the cost of facilities, materials, lunch, and breaks. Seats are limited; please submit your registration as soon as possible. Workshop space will be filled in order of receipt of registration. Those accepted into the workshop will receive confirmation. Registration will close after the workshop is filled. Registration at the site is not guaranteed but may be possible on a space available basis on the day of the public workshop beginning at 8 a.m. The cost of registration at the site is $400 payable to FAPC. There are no registration fees for FDA employees.

If you need special accommodations due to a disability, please contact Karen Smith (see *Contact*) at least 7 days in advance.

Registration Form Instructions: To register, please complete the online registration form at *http://www.fapc.biz/forms/foodlabeling.htm*.

Transcripts: Transcripts of the public workshop will not be available due to the format of this workshop. Course handouts may be requested after the date of the public workshop through the contact persons (see *Contact*) at cost plus shipping.

SUPPLEMENTARY INFORMATION: This public workshop is being held in response to the large volume of food labeling inquiries from small food manufacturers and startups originating from the area covered by the FDA DALDO. FDA DALDO presents this workshop to help achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 393), which include working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. This is consistent with the purposes of ORA's Small Business Representative Program, which are in part to respond to industry inquiries, develop educational materials, and sponsor workshops and conferences to provide firms, particularly small businesses, with firsthand working knowledge of FDA's requirements and

compliance policies. This workshop is also consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), as outreach activities by government agencies to small businesses.

The goal of this public workshop is to present information that will enable manufacturers and regulated industry to better comply with labeling requirements, especially in light of growing concerns about obesity and food allergens. Information presented will be based on Agency position as articulated through regulation, compliance policy guides, and information previously made available to the public. Topics to be discussed at the workshop include: (1) Mandatory label elements, (2) the Food Allergen Labeling and Consumer Protection Act of 2004, (3) nutrition labeling requirements, (4) health and nutrition claims, and (5) special labeling issues, such as exemptions. FDA expects that participation in this public workshop will provide regulated industry with greater understanding of the Agency's regulatory and policy perspectives on food labeling and increase voluntary compliance with labeling requirements.

Dated: February 23, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–4782 Filed 2–28–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1984.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the Agency; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Maternal, Infant and Early Childhood Home Visiting Program FY 2012 Competitive Funding Opportunity Announcement (OMB No. 0915–xxxx)—[New]

On March 23, 2010, the President signed into law the Patient Protection and Affordable Care Act (the Act). Section 2951 of the Act amended Title V of the Social Security Act by adding a new section, 511, which authorized the creation of the Maternal, Infant, and Early Childhood Home Visiting Program, (*http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3590enr.txt.pdf,* pages 216–225). The Act responds to the diverse needs of children and families in communities at risk and provides an unprecedented opportunity for collaboration and partnership at the Federal, State, and community levels to improve health and development outcomes for at risk children through evidence-based home visiting programs.

Under this program, a funding opportunity announcement for formula-based funding for States was issued in June 2011. The same level of funding, $125,000,000, was made available to States according to the same formula as in FY 2010. These two-year grants were awarded to support States in implementing their Updated State Plans that were submitted during the summer of 2011.

Additionally, a competitive Funding Opportunity Announcement (FOA) was issued in June 2011 to allow interested States to apply for one of two possible grants: Development Grants and Expansion Grants. Development Grants were intended to support States and jurisdictions with modest evidence-based home visiting programs to expand the depth and scope of these efforts, with the intent to develop the infrastructure and capacity needed to seek an Expansion Grant in the future. Expansion Grants were intended to recognize states and jurisdictions that had already made significant progress towards a high-quality home visiting program or embedding their home visiting program into a comprehensive, high-quality early childhood system. Among eligible applicants to the competitive grant program, 13 States were awarded Development Grants and nine States were awarded Expansion Grants. Currently, the 54 States and eligible jurisdictions participating in the formula-funded program have begun implementing their State Home Visiting Plans. Because the FY 2011 grants were for two-years, no additional FOA will be issued this year for the formula program, but the State grantees will be completing non-competing progress reports in order to secure the release of their FY 2012 allocations. The 22 States that received competitive grant funding have also begun to carry out their proposed programs, integrating them with their formula-based programming. These competitive grants are for two years (Development Grants) and four years (Expansion Grants) respectively, and those grantees will also be completing non-competitive progress reports for FY 2012.

The Maternal, Infant, and Early Childhood Home Visiting Program intends to make an additional $84,484,397 available for Development and Expansion Grants in FY 2012. With the concurrence of the Secretary, ten more Expansion Grants, totaling $71,359,043, will be awarded (by rank order) from among high-ranking applicants under the FY 2011 announcement. The FY 2012 competitive FOA will announce approximately $12,000,000 for new Development Grants. The intent of these Development Grants is identical to that announced in FY 2011, which is to support States and jurisdictions with modest evidence-based home visiting programs to expand the depth and scope of these efforts, with the intent to develop the infrastructure and capacity needed to seek an Expansion Grant in the future. It is anticipated that there will be awarded between four and eight Development Grants. The total grant award may range between $1 million to $3 million annually. Applicants may apply for a ceiling amount of up to $3 million per year. The project period is two (2) years.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Introduction	30	1	8	240
Needs Assessment	30	1	16	480
Methodology	30	1	24	720
Work Plan	30	1	16	480
Resolution of Challenges	30	1	8	240
Evaluation and Technical Support Capacity	30	1	24	720
Organizational Information	30	1	8	240
Additional Attachments	30	1	24	720
Total				3840

Email comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 22, 2012.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2012–4722 Filed 2–28–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1984.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Area Health Education Centers Project on the Mental and Behavioral Health and Substance Abuse Issues of Veterans/Service Members and Their Families (OMB No. 0915–xxxx)—[New]

The Area Health Education Centers (AHEC) Program consists of interdisciplinary, community-based, primary care training programs where academic and community-based leaders work to improve the distribution, diversity, supply, and quality of health care personnel. The AHEC Program grantees include schools of medicine or osteopathic medicine, incorporated consortiums of such schools, or the parent institutions of such schools. In a state with no AHEC program in operation, a school of nursing is eligible to apply. AHEC grantees contract with community-based AHEC centers to implement educational activities that involve several health professions disciplines and expose students to primary care and the needs of underserved areas and health disparity populations. The training of primary care personnel is a central focus of AHEC programs, where emphasis is placed on training individuals in primary care delivery sites (in both rural and other underserved areas). The AHEC programs and centers, along with state and local partners, implement student training programs, continuing education for healthcare providers, and health careers outreach activities that are responsive to the current healthcare workforce and service needs of underserved areas and health disparity populations of a state or region.

The AHEC Program is implementing a project to provide high quality, culturally competent care to veterans/service members and their families by providing continuing education (CE) to civilian primary care, mental and behavioral health, and other healthcare providers. The purpose of these data collection instruments, including the CE Participant Evaluation Form and the CE Participant Evaluation Follow-Up Form, is to provide data to inform and support the evaluation of the project, assess the extent to which the CE provided affected a provider's clinical or administrative practice, and provide aggregate information about the providers trained and project activities.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
CE Participant Evaluation Form	10,000	1	10,000	.5	5,000
CE Participant Evaluation Follow-Up Form	2,000	1	2,000	.17	340
Total	[1] 10,000				5,340

[1] The CE Evaluation Follow-Up Form will only be completed by a sample of the total CE participants. Thus, the 2,000 respondents will not be unique respondents, but instead a sub-set of the CE Participant Evaluation Form respondents.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: February 22, 2012.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2012–4725 Filed 2–28–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Intrathecal (IT) Administration of Rituximab to Treat Multiple Sclerosis (MS)

Description of Technology: Multiple sclerosis (MS) is a chronic, neurological, autoimmune, demyelinating disease. The pathology of MS is characterized by an abnormal immune response directed against the central nervous system. In particular, T-lymphocytes are activated against the myelin sheath of the neurons of the central nervous system causing demyelination. Secondary-progressive multiple sclerosis (SP–MS) is the chronic phase of MS. The majority of people who have relapsing-remitting MS eventually develop SP–MS. There are currently no effective treatments for SP–MS patients who do not have evidence for focal brain inflammation measured by contrast enhancing lesions (CEL) on brain MRI. NIH investigators have proposed that intrathecal administration of Rituximab, a monoclonal antibody (Ab) that depletes B cells and effectively decreases CEL in relapsing-remitting MS (RR–MS) but does not affect progression of disability in progressive MS, may deplete B cells from the intrathecal compartment leading to inhibition of T cell activation within intrathecal compartment, and thereby provide a novel therapeutic approach to treat SP–MS. A Clinical trial is in progress to evaluate this novel approach.

Potential Commercial Applications: Improved therapeutics to treat or prevent Secondary-progressive multiple sclerosis (SP–MS).

Competitive Advantages: This technology would provide the first effective therapy for Secondary-progressive multiple sclerosis patients lacking contrast enhancing lesions.

Development Stage

- Clinical.
- In vivo data available (animal).

Inventor: Bibiana Bielekova (NINDS).

Publication: Double Blind Combination of Rituximab by Intravenous and Intrathecal Injection Versus Placebo in Patients With Low-Inflammatory Secondary Progressive Multiple Sclerosis (RIVITaLISe). ClinicalTrials.gov Identifier: NCT01212094 (*http://clinicaltrials.gov/ct2/show/NCT01212094*).

Intellectual Property: HHS Reference No. E–249–2011/0—U.S. Provisional Application No. 61/539,870 filed 27 Sep 2011.

Licensing Contact: Suryanarayana (Sury) Vepa, Ph.D., J.D.; 301–435–5020; *vepas@mail.nih.gov*.

miR126 for the Mobilization of Hematopoietic Stem/Progenitor Cells (HSPCs) into Peripheral Blood

Description of Technology: The NIH inventors have discovered that a micro RNA, miR126, mobilizes hematopoietic stem/progenitor cells (HSPCs) from the bone marrow into blood. These mobilized HSPCs can be easily collected from blood and used for reconstitution of ablated or functionally-impaired bone marrow. miR126 may also facilitate mobilization of bone-resident cancer cells into the circulation where they could be more easily targeted by cancer therapeutics. This discovery could replace bone marrow transplantation as we do it today. Rather than using the current non-selective agent G–CSF (which preferentially mobilizes mature myeloid cells rather than stem/progenitor cells), miR126 could be used for selective mobilization of the HSPCs needed for hematopoietic cell transplantation. Additionally, miR126 could be used to mobilize malignant cells from the bone marrow and render them more easy targets for therapy. It was previously shown that the bone marrow cavity promotes the survival of many cells including tumor cells, and that such cells may easily die when removed from the bone marrow niche and moved to the blood. Therefore, this discovery could also change treatment of many cancers that arise within the bone marrow or metastasize to the bone. Since the mechanism by which miR126 promotes HSPCs/tumor cell mobilization is attributable to the inhibition of VCAM–1 expression, miR126 could be used to treat inflammatory states where the expression of VCAM1 provides an anchor for inflammatory cells at sites of inflammation.

Potential Commercial Applications

- Method of mobilizing hematopoietic stem/progenitor cells (HSPCs) from the bone marrow to the blood.
- Use in hematopoietic cell transplantation and treatment of hematopoietic deficiency, hematological failure, and cancer treatments.
- To mobilize cancer cells from the bone marrow and thus serve as adjuvant cancer therapy.
- As an anti-inflammatory agent to reduce inflammatory cell infiltrates at sites of inflammation.

Competitive Advantages: Mobilization of HSPCs yielding high-level, selective and rapid mobilization of HSPCs to the peripheral blood.

Development Stage

- Pre-clinical.
- In vivo data available (animal).

Inventors: Giovanna Tosato and Ombretta Salvucci (NCI).

Publication: Salvucci O, et al. MicroRNA126 contributes to G–CSF-induced hematopoietic progenitor cell mobilization by reducing VCAM–1 expression. Haematologica. 2012 Jan 22; Epub ahead of print. [PMID 22271895].

Intellectual Property: HHS Reference No. E–197–2011/0—U.S. Provisional Application No. 61/542,468 filed 02 Oct 2011.

Licensing Contact: Whitney Hastings; 301–451–7337; *hastingw@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize miR126 and Mobilization of Hematopoietic Stem/Progenitor Cells. For collaboration opportunities, please contact John Hewes, Ph.D. at *hewesj@mail.nih.gov*.

Use of Frizzled (Fzd) as a Biomarker for Cancer Patient Selection and Therapeutic Intervention

Description of Technology: Personalized medicine is becoming more important in the diagnosis and treatment of diseases, particularly cancer. One signaling pathway which

has been demonstrated to be involved in cancer is the Wnt/beta catenin signaling pathway. The NIH scientists associated with this technology have identified a potential new biomarker for cancer based on their investigation of the role of the secreted frizzled related proteins, sFRP's, which are known to play a role in Wnt/beta catenin signaling. In particular, the scientists have determined that different Frizzled receptors (Fzd) have different and opposite roles in Wnt/beta catenin signaling with the expression of certain Fzd receptors, e.g. Fzd5, being associated with an increase in Wnt/beta catenin signaling and the expression of other Fzd receptors, e.g., Fzd2, being associated with a decrease in Wnt/beta catenin signaling.

Potential Commercial Applications

- As a diagnostic to identify patients for whom frizzled antagonists may be useful therapeutic agents.
- As an aid for determining the appropriate level of frizzled antagonist to be given to a patient.
- As an aid in drug discovery for the evaluation of Wnt/frizzled antagonists.

Competitive Advantages

- Ability to stratify clinical trials by identifying patients whose tumor has the appropriate molecular signature.
- Ability to provide an appropriate dosing regimen based on the specificity of the drug for a particular Fzd.
- Tool for further characterizing cancer drugs which target the Wnt/beta catenin pathway providing for more well characterized and specific drugs.

Development Stage

- Early-stage.
- In vitro data available.

Inventors: Jeffrey S. Rubin, Charles P. Xavier, and Maria Melikova (all of NCI).

Intellectual Property

- HHS Reference No. E–196–2011/0—U.S. Provisional Application No. 61/497,513 filed 15 Jun 2011.
- HHS Reference No. E–196–2011/1—U.S. Provisional Application No. 61/499,684 filed 21 Jun 2011.

Related Technologies: NIH also has other intellectual property (IP) related to sFRP which may be useful in conjunction with the use of the biomarker described above. The IP includes patents belonging to:

- HHS Reference No. E–160–1997/2—U.S. Patents 6,479,255 and 7,183,377.
- HHS Reference No. E–014–2000/0—U.S. Patents 6,600,018, 7,223,853, and 7,947,651.
- HHS Reference No. E–060–2000/1—U.S. Patent 7,488,710; Foreign patent protection is also available (PCT/US02/00869, published as WO 02/055547).

Licensing Contact: Susan S. Rucker; 301–435–4478; *ruckersu@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize Regulation of Wnt and Frizzled signaling by secreted Frizzled-related proteins. For collaboration opportunities, please contact John Hewes, Ph.D. at *hewesj@mail.nih.gov*.

A Highly Potent Human sRAGE Protein for Treating Vascular Disease, Injury, or Inflammation

Description of Technology: The receptor for advanced glycation end products (RAGE) is a cell surface protein that triggers signaling pathways leading to inflammation. RAGE-stimulated inflammation can contribute to adverse vascular conditions, such as atherosclerosis and restenosis. The soluble version of RAGE (sRAGE) binds the same target molecules (advanced glycation end products), but cannot activate inflammatory signaling pathways. For this reason, sRAGE is thought to act as a decoy for RAGE. sRAGE reduces inflammation and pathogenic consequences associated with RAGE signaling. The administration of sRAGE has been used to treat atherosclerosis and arterial restenosis in animal models. The inventors established a way to produce human sRAGE with more than 1000-fold greater potency than current methods. Production of full length human sRAGE in cultured mammalian cells enables addition of mammalian post-translational modifications that dramatically enhance potency. This invention covers methods of production, the resulting modified sRAGE molecules, and methods of using this highly potent sRAGE for treating adverse vascular conditions.

Potential Commercial Applications

- Atherosclerosis therapeutics.
- Prevention of vascular inflammation.
- Treating vascular injuries due to angioplasty or traumatic injury.
- Treating vascular complications of diabetes mellitus.
- Alzheimer's disease treatment based on amyloid-beta protein binding.

Competitive Advantages

- Greater than 1000-fold increased potency over sRAGE produced in insect cells.
- Readily scalable production as a recombinant protein secreted from CHO cells.
- Simple affinity purification method.

Development Stage

- Early-stage.
- Pre-clinical.
- In vitro data available.
- In vivo data available (animal).

Inventors: Li Lin, Sungha Park, Wen Wei, Rui-ping Xiao, and Mark Talan (NIA).

Publication: Lin L, *et al.* RAGE signaling in inflammation and arterial aging. Front Biosci. 2009 Jan 1;14:1403–1413. [PMID 19273137].

Intellectual Property: HHS Reference No. E–165–2011/0—U.S. Provisional Application No. 61/582,574 filed 03 Jan 2012.

Related Technology: HHS Reference No. E–016–2009/0—U.S. Patent Application No. 12/652,395 filed 05 Jan 2010.

Licensing Contact: Betty B. Tong, Ph.D.; 301–594–6565; *tongb@mail.nih.gov*.

Collaborative Research Opportunity: The National Institute on Aging, Laboratory of Cardiovascular Science, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize sRAGE. For collaboration opportunities, please contact Vio Conley, M.S. at *conleyv@mail.nih.gov*.

Dated: February 23, 2012.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2012–4736 Filed 2–28–12; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Tooth Development and Mobility, Mineralized Tissue and Periodontal Disease.

Date: March 16, 2012.

Time: 11:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Priscilla B Chen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787, *chenp@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: February 21, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4743 Filed 2–28–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) 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 purpose of this meeting is to evaluate requests for development resources for potential new cancer diagnostics. The outcome of the evaluation will provide information for consideration by an internal NCI committee that will decide whether NCI/DCTD should support requests and make available contract resources for development of the potential diagnostics to improve the treatment of cancer. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Clinical Assay Development Program (CADP).

Date: April 10, 2012.

Time: 8 a.m.–4 p.m.

Agenda: To evaluate requests for development resources for potential new diagnostics for cancer.

Place: National Cancer Institute, NIH, 6001 Executive Boulevard, Room C, Rockville, MD 20852.

Contact Person: Tracy G. Lively, Ph.D., Executive Secretary, Clinical Assay Development Program (CADP), National Cancer Institute, NIH, 6130 Executive Boulevard, EPN/6042, Bethesda, MD 20892, 301–496–1591, *livelyt@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 22, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4750 Filed 2–28–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Collaborative Research in Integrative Cancer Biology and the Tumor Microenvironment.

Date: March 20, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Eun Ah Cho, Ph.D., Scientific Review Officer, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Suite 703, Room 7073, Bethesda, MD 20892, 301–435–1822, *choe@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Novel Imaging Agents to Expand the Clinical Toolkit for Cancer Diagnosis, Staging & Treatment.

Date: March 22, 2012.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 706, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ilda M McKenna, Ph.D., Scientific Review Officer, Research Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8111, Bethesda, MD 20892, 301–496–7481, *mckennai@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 22, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4752 Filed 2–28–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Anterior Eye Disease.

Date: March 19, 2012.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NEI, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anne E. Schaffner, Ph.D., Chief, Scientific Review Officer, Division of Extramural Research, National Eye Institute, National Institutes of Health, 5635 Fishers Lane, Suite 1300, MSC 9300, 301–451–2020, *aes@nei.nih.gov*.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Clinical Applications II.

Date: March 30, 2012.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Anne E. Schaffner, Ph.D., Chief, Scientific Review Officer, Division of Extramural Research, National Eye Institute, National Institutes of Health, 5635 Fishers Lane, Suite 1300, MSC 9300, 301–451–2020, *aes@nei.nih.gov*.

Name of Committee: National Eye Institute Special Emphasis Panel, NEI Institutional Training Grant Applications.

Date: April 2, 2012.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Daniel R. Kenshalo, Ph.D., Scientific Review Officer, Division of Extramural Research, National Eye Institute, National Institutes of Health, 5635 Fishers Lane, Suite 1300, MSC 9300, 301–451–2020, *kenshalod@nei.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: February 22, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4751 Filed 2–28–12; 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: Center for Scientific Review Special Emphasis Panel; Member Conflict: Risk Prevention, and Health Behavior.

Date: March 12, 2012.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Martha M Faraday, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, 301–435–3575, *faradaym@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Bioengineering Sciences.

Date: March 16, 2012.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ping Fan, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892, 301–408–9971, *fanp@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS Immunology and Pathogenesis Study Section.

Date: March 19, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Shiv A Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS Discovery and Development of Therapeutics Study Section.

Date: March 22, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street NW., Washington, DC 20036.

Contact Person: Shiv A Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–HD–12–204: Sleep and Social Environment: Basic Biopsychosocial Processes (R21).

Date: March 23, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Mandarin Oriental, 1330 Maryland Avenue SW., Washington, DC 20024.

Contact Person: Jane A Doussard-Roosevelt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@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: February 21, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–4748 Filed 2–28–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: 2012 National Survey on Drug Use and Health (NSDUH) Questionnaire Field Test—NEW

The National Survey on Drug Use and Health (NSDUH) is a survey of the civilian, non-institutionalized population of the United States 12 years old and older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

In order to continue producing current data, SAMHSA's Center for Behavioral Health Statistics and Quality (CBHSQ) must update the NSDUH periodically to reflect changing substance abuse and mental health issues. CBHSQ is planning to redesign the NSDUH for the 2015 survey year. The redesign will seek to achieve two main goals: (1) To revise the questionnaire to address changing policy and research data needs, and (2) to modify the survey methodology to improve the quality of estimates and the efficiency of data collection and processing. SAMHSA is requesting approval to conduct a Questionnaire Field Test (QFT) to test revisions to the questionnaire associated with these goals.

The field test will consist of 2,000 English-speaking respondents in the continental United States. The sample size of the survey will be large enough to detect differences between data collected using the annual NSDUH compared to the redesigned procedures. The total annual burden estimate is shown below:

ESTIMATED BURDEN FOR 2012 NSDUH QFT

Instrument	Number of respondents	Responses per respondent	Hours per response	Total burden hours	Hourly wage rate	Annualized costs
Household Screening	3,338	1	0.083	277	$14.45	$4,003
Interview	2,000	1	1.250	2,500	14.45	36,125
Screening Verification	100	1	0.067	6.7	14.45	97
Interview Verification	300	1	0.067	20	14.45	289
Total	3,338			2,804		40,514

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 8–1099, One Choke Cherry Road, Rockville, MD 20857 or email a copy to *summer.king@samhsa.hhs.gov.* Written comments must be received before 60 days after the date of the publication in the **Federal Register**.

Summer King,

Statistician.

[FR Doc. 2012–4713 Filed 2–28–12; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0116]

Information Collection Request: GFIRST Conference Stakeholder Evaluation

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 60-day notice and request for comments; New Information Collection Request: 1670–NEW.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Cybersecurity and Communications (CS&C), National Cyber Security Division (NCSD), United States Computer Emergency Readiness Team (US–CERT), 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 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Comments are encouraged and will be accepted until April 30, 2012. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Written comments and questions about this Information Collection Request should be forwarded to DHS/NPPD/CS&C/NCSD/US–CERT Department of Homeland Security (Attn: NPPD/CS&C/NCSD/US–CERT) 245 Murray Lane SW., Bldg 410, Washington, DC 20528–0635. Emailed requests should go to Corliss McCain, *Corliss.McCain@dhs.gov.* Written comments should reach the contact person listed no later than April 30, 2012. Comments must be identified by ''DHS–2011–0116''and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Email:* Include the docket number in the subject line of the message.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

SUPPLEMENTARY INFORMATION: The purpose of DHS's premier cyber conference is to continually seek to enhance collaborative efforts between cyber constituencies, partners and stakeholders. The data provided will assist GFIRST planners in areas of improvement and efficiency. With the survey responses we can better tailor our events, materials and activities to improve the efforts of protecting our Nation's cybersecurity. As part of the National Strategy for a Secure Cyberspace, US–CERT is required to assist in the fight against the disruption of the operation of critical information systems.

The National Strategy for a Secure Cyberspace requires US–CERT to assist in the continuous assessment of threats and vulnerabilities to Federal cyber systems. As part of our mission, US–

CERT is required to assist and urge state and local governments to consider establishing information technology security programs and participate in information sharing and analysis centers with similar governments. The GFIRST conference provides an annual forum to network with public and private stakeholders, while also acting as a conduit for state, local and government information sharing critical to securing our nations cyberspace.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Cybersecurity and Communications, National Cyber Security Division, United States Computer Emergency Readiness Team.

Title: GFIRST Conference Stakeholder Evaluation.

OMB Number: 1670–NEW.

Frequency: Annually.

Affected Public: Conference attendees, comprised of general public.

Number of Respondents: 1000 respondents.

Estimated Time per Respondent: 2 minutes.

Total Burden Hours: 16.6 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $675.95.

Dated: February 21, 2012.

David Epperson,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2012–4754 Filed 2–28–12; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2005–21866]

Intent To Request Renewal From OMB of One Current Public Collection of Information: Enhanced Security Procedures at Ronald Reagan Washington National Airport

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: 60-day Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), OMB control number 1652–0035, abstracted below, that we will submit to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. The collection requires General Aviation (GA) aircraft operators who wish to fly into and/or out of Ronald Reagan Washington National Airport (DCA) to designate a security coordinator and adopt a DCA Access Standard Security Program (DASSP).

DATES: Send your comments by April 30, 2012.

ADDRESSES: Comments may be emailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227–3651.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control No. 1652–0035; Enhanced Security Procedures at Ronald Reagan Washington National Airport (DCA), 49 CFR part 1562. TSA is hereby requesting an extension of this information collection.

TSA requires General Aviation (GA) aircraft operators who wish to fly into and/or out of DCA to designate a security coordinator and adopt the DASSP. Once aircraft operators have complied with the DASSP requirements, they may request a slot reservation from the Federal Aviation Administration (FAA) and request a flight authorization from TSA to fly into and out of DCA.

To receive authorization for a flight into or out of DCA, aircraft operators must submit certain information to TSA so that TSA can conduct name-based threat assessments on the crewmembers and passengers, including armed security officers (ASOs) when required to be onboard. The operator's last point of departure must be from a Fixed Base Operator (FBO) that holds a TSA-approved DCA Access Fixed Based Operator Standard Security Program (FBOSSP), located at an airport designated by TSA (gateway airport). Before the aircraft departs the gateway airport for DCA, the operator must inspect the aircraft and screen the passengers, their carry-on property, and property carried in the cargo hold.

For each passenger and crewmember onboard an aircraft that operates into and/or out of DCA, the aircraft operator must submit the following information: (1) Legal name, including first, middle, and last, any applicable suffix, and any other names used; (2) current mailing address, including residential address if different than current mailing address; (3) date and place of birth; (4) Social Security number (submission is voluntary, although recommended); (5) citizenship status and date of naturalization, if the individual is a naturalized citizen of the United States;

and (6) alien registration number, if applicable. TSA uses this information to perform a security threat assessment to determine whether the individuals pose, or are suspected of posing, a security threat.

TSA requires the following individuals to submit identifying information and fingerprints for a Criminal History Records Check (CHRC): Individuals designated as security coordinators, ASOs, and flight crewmembers that operate GA aircraft into and out of DCA. For flight crewmembers, TSA also uses this information to check FAA records to determine whether the flight crewmember has a record of violation of specified FAA safety regulations and to conduct CHRCs on flight crewmembers who have not successfully undergone a CHRC with the crewmember's current employer. As part of the threat assessment process, TSA shares the information with the Federal Bureau of Investigation (FBI). In addition to providing fingerprints and identifying information, ASOs must provide personal history information as well as weapon qualification information.

Aircraft operators must provide TSA with the flight plan and registration number of the aircraft that operates to or from DCA. This information is shared with FAA for purposes of tracking and identifying approved aircraft. TSA estimates a total of 4887 respondents annually. The total number of annual burden hours is estimated to be 5546.74 hours per year (4887 respondents × 1.135 hours per respondent = 5546.74 hours annually).

Issued in Arlington, Virginia, on February 23, 2012.

Joanna Johnson,

Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2012–4735 Filed 2–28–12; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–15]

Notice of Submission of Proposed Information Collection to OMB; Evaluation of the Veterans Homelessness Prevention Demonstration

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Department of Housing and Urban Development requests review and approval of the Paperwork Reduction Act requirements for the collection of information required to evaluate the Veterans Homelessness Prevention Demonstration (VHPD). The Department solicits public comments on the proposed collection of information to: (1) Enhance the quality, utility, and clarity of the information to be collected; and (2) minimize the burden of the information collection on those who respond; including through the use of appropriate automated collection techniques or other forms of information technology that will reduce burden.

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 approval Number (2528-New) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov;* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Evaluation of the Veterans Homelessness Prevention Demonstration.

OMB Approval Number: 2528-New.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: The FY 2009 budget for HUD included a $10 million set-aside for a demonstration program ''to test the effectiveness of strategies to prevent veterans from becoming homeless'' (Senate Report No. 110–418). The Senate Report directed HUD to coordinate the demonstration program with the U.S. Department of Veterans Affairs (VA) and the U.S. Department of Labor (DOL). The resulting demonstration program, the Veterans Homelessness Prevention Demonstration (VHPD), is being implemented in five communities. The objectives of the VHPD evaluation are to (1) examine the most effective ways to identify, reach, and assist veterans who are at-risk of homelessness or are experiencing short-term homelessness; (2) evaluate the extent to which VHPD services and activities meet the needs of veterans experiencing a housing crisis and contribute to their longer-term economic stability; and (3) identify barriers to providing prevention services to veterans.

Frequency of Submission: Once.

Estimated total number of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of responses:

Form	Respondent sample	Number of respondents	Average time to complete (hours)	Frequency	Total burden (hours)
Baseline Survey	VHPD Households	500	0.5	1	250

Form	Respondent sample	Number of respondents	Average time to complete (hours)	Frequency	Total burden (hours)
Follow-up Survey	VHPD Households	500	0.5	1	250
Focus Groups	VHPD clients	80	2.0	1	160
Total Burden Hours					660

Total Estimated Burden Hours: 660.

Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 23, 2012.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–4828 Filed 2–28–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Scientific Earthquake Studies Advisory Committee

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Public Law 106–503, the Scientific Earthquake Studies Advisory Committee (SESAC) will hold its next meeting at the Headquarters of the United States Geological Survey at 12201 Sunrise Valley Drive, Reston Virginia 20192. The Committee is comprised of members from academia, industry, and State government. The Committee shall advise the Director of the U.S. Geological Survey (USGS) on matters relating to the USGS's participation in the National Earthquake Hazards Reduction Program.

The Committee will receive reports on the status of activities of the Program and progress toward Program goals and objectives. The Committee will assess this information and provide guidance on the future undertakings and direction of the Earthquake Hazards Program.

Meetings of the Scientific Earthquake Studies Advisory Committee are open to the public.

DATES: March 29, 2012, commencing at 8:30 a.m. and adjourning at Noon on March 30, 2012.

CONTACT: Dr. John Filson, U.S. Geological Survey, MS 905, 12201 Sunrise Valley Drive, Reston, Virginia 20192, (703) 648–6785, *jfilson@usgs.gov*.

Dated: February 17, 2012.

David Applegate,

Associate Director for Natural Hazards.

[FR Doc. 2012–4712 Filed 2–28–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ956000.L14200000.BJ0000.241A]

Notice of Filing of Plats of Survey; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey; Arizona.

SUMMARY: The plats of survey of the described lands were officially filed in the Arizona State Office, Bureau of Land Management, Phoenix, Arizona, on dates indicated.

SUPPLEMENTARY INFORMATION:

The Gila and Salt River Meridian, Arizona

The plat representing the dependent resurvey of the Third Standard Parallel South (south boundary), the east, north and a portion of the west boundaries, the survey of a portion of the subdivisional lines and the establishment of an electronic control corner, Township 15 South, Range 3 West, accepted February16, 2012, and officially filed February 22, 2012, for Group 1089, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the dependent resurvey of a portion of the Third Standard Parallel South (south boundary), Township 15 South, Range 2 West, and the survey of the south, east and west boundaries and a portion of the subdivisional lines, Township 16 South, Range 3 West, accepted February 16, 2012, and officially filed February 22, 2012, for Group 1089, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

A person or party who wishes to protest against any of these surveys must file a written protest with the Arizona State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the Arizona State Office, Bureau of Land Management, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427. 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.

Stephen K. Hansen,

Chief Cadastral Surveyor of Arizona.

[FR Doc. 2012–4804 Filed 2–28–12; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

[5017–7145–409]

Draft Environmental Impact Statement for the General Management Plan, Buck Island Reef National Monument, Virgin Islands

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of a Draft Environmental Impact Statement for the General Management Plan (DEIS/GMP), Buck Island Reef National Monument, Virgin Islands.

SUMMARY: Pursuant to 42 U.S.C. 4332(2)(C) of the National Environmental Policy Act of 1969 and National Park Service (NPS) policy in Director's Order Number 2 (Park Planning) and Director's Order Number 12 (Conservation Planning, Environmental Impact Analysis, and Decision-making) the NPS announces the availability of a DEIS/GMP for Buck Island Reef National Monument, Virgin Islands.

The document provides a framework for management, use, and development options for Buck Island Reef National Monument by the NPS for the next 15 to 20 years. It describes four management alternatives for consideration, including a No-Action Alternative that continues current management policies and the NPS's preferred alternative. The document analyzes the environmental impacts of the alternatives.

DATES: There will be a 60-day comment period beginning with the Environmental Protection Agency's publication of its notice of availability in the **Federal Register**.

ADDRESSES: Copies of the DEIS/GMP are available by contacting the Park Superintendent at Christiansted National Historic Site, 2100 Church Street, 100 Danish Customs House, St. Croix, Virgin Islands 00820–4611; telephone: 340–773–1460. An electronic copy of the DEIS/GMP is available on the Internet at *http://parkplanning.nps.gov*.

FOR FURTHER INFORMATION CONTACT: Contact the Superintendent, Buck Island Reef National Monument, at the address and telephone number shown above. An electronic copy of the DEIS/GMP is available on the Internet at *http://parkplanning.nps.gov/parkHome.cfm?parkID=357*.

The responsible official for this DEIS/GMP is the Regional Director, Southeast Region, NPS, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

SUPPLEMENTARY INFORMATION: There will be a 60-day comment period beginning with the Environmental Protection Agency's publication of its notice of availability in the **Federal Register**. If you wish to comment on the DEIS/GMP, you may submit your comments by any one of several methods. You may mail comments to the Superintendent at the address shown above. You may also submit a comment via the Internet at *http://parkplanning.nps.gov*. Finally, you may present your comments in person at the public meetings to be held on St. Croix during the public review period.

Before including your address, phone number, email address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so.

The DEIS/GMP presents three management alternatives for Buck Island Reef National Monument in addition to the no-action alternative. As a no-take marine reserve, the DEIS/GMP seeks to achieve an acceptable standard of service for resource protection and visitor experience within the park's 19,015 acres.

The four alternatives and their key provisions are summarized. Alternative A (No-action Alternative): The continuation of current management practices and trends. This alternative would limit anchoring and provide access to Buck Island for up to 87 vessels. Alternative B (The NPS Preferred Alternative): This alternative provides for moorings and limited opportunities for anchoring for vessels at designated locations. No bow and stern anchoring would be permitted under this alternative, and anchoring would be phased out over 10 years. This alternative would provide access to Buck Island for up to 72 vessels. Alternative C: This alternative provides for bow and stern anchoring and new moorings. Access to Buck Island would be provided for up to 92 vessels. Alternative D: This alternative provides for recreational opportunities similar to existing conditions under Alternative A, with the exception that shoreline bow and stern anchoring would be eliminated. Access to Buck Island would be provided for up to 112 vessels.

Authority: The authority for publishing this notice is 40 CFR 1506.6.

Dated: February 17, 2012.

Gordon Wissinger,

Acting Regional Director, Southeast Region.

[FR Doc. 2012–4753 Filed 2–28–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

Captain John Smith Chesapeake National Historic Trail Advisory Council

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: As required by the Federal Advisory Committee Act, the National Park Service (NPS) is hereby giving notice that the Advisory Committee on the Captain John Smith Chesapeake National Historic Trail will hold a meeting. Designated through an amendment to the National Trails System Act (16 U.S.C. 1241), the trail consists of ''a series of water routes extending approximately 3,000 miles along the Chesapeake Bay and its tributaries in the States of Virginia, Maryland, Delaware, and in the District of Columbia,'' tracing the 1607–1609 voyages of Captain John Smith to chart the land and waterways of the Chesapeake Bay. This meeting is open to the public. Preregistration is required for both public attendance and comment. Any individual who wishes to attend the meeting and/or participate in the public comment session should register via email at *Christine_Lucero@nps.gov* or telephone: (757) 258–8914. For those wishing to make comments, please provide a written summary of your comments prior to the meeting. The Designated Federal Official for the Advisory Council is John Maounis, Superintendent, Captain John Smith National Historic Trail, telephone: (410) 260–2471.

DATES: The Captain John Smith Chesapeake National Historic Trail Advisory Council will meet from 10 a.m. to 4:30 p.m. on Wednesday, March 21, 2012.

ADDRESSES: The meeting will be held at the Accokeek Foundation's Education Center at Piscataway Park and National Colonial Farm, 3400 Bryan Point Road, Accokeek, MD 20607. For more information, please contact the NPS Chesapeake Bay Office, 410 Severn Avenue, Suite 314, Annapolis, MD 21403.

FOR FURTHER INFORMATION CONTACT: Christine Lucero, Partnership Coordinator for the Captain John Smith Chesapeake National Historic Trail, telephone: (757) 258–8914 or email: *Christine_Lucero@nps.gov*.

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces a meeting of the Captain John Smith Chesapeake National Historic Trail Advisory Council for the purpose of discussing a land protection strategy and to update the Council on implementation projects.

The Committee meeting is open to the public. Members of the public who would like to make comments to the Committee should preregister via email at *Christine_Lucero@nps.gov* or telephone: (757) 258–8914; a written summary of comments should be provided prior to the meeting. Comments will be taken for 30 minutes at the end of the meeting (from 4 p.m. to 4:30 p.m.). Before including your address, telephone number, email address, or other personal indentifying 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. All comments will be made part of the public record and will be electronically distributed to all Committee members.

Dated: February 23, 2012.

John Maounis,

Superintendent, Captain John Smith National Historic Trail, National Park Service, Department of the Interior.

[FR Doc. 2012–4847 Filed 2–28–12; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–829]

Certain Toner Cartridges and Components Thereof Corrected Notice of Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 23, 2012, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Canon, Inc., Canon U.S.A., Inc., and Canon Virginia, Inc. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain toner cartridges and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 5,903,803 (''the '803 patent'') and U.S. Patent No. 6,128,454 (''the '454 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *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.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on February 21, 2012, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain toner cartridges and components thereof that infringe one or more of claims 128–130, 132, 133 and 139–143 of the '803 patent and one or more of claims 24–30 of the '454 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are: Canon Inc., 30–2, Shimomaruko 3-chome, Ohta-ku, Tokyo 146–8501, Japan.

Canon U.S.A., Inc., One Canon Plaza, Lake Success, NY 11042.

Canon Virginia, Inc., 12000 Canon Boulevard, Newport News, VA 23606.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Clover Holdings, Inc., 2700 West Higgins Road, Suite 100, Hoffman Estates, IL 60169.

Clover Technologies Group, LLC, d/b/a Depot International, f/k/a Depot America, f/k/a Image1 Products,4200 Columbus Street, Ottawa, IL 61350.

Clover Vietnam Co., Ltd., Bau Cap Hamlet, Nhuan Duc Commune, Cu Chi District, Ho Chi Minh City, Vietnam.

Dataproducts USA, LLC, 2001 Anchor Court, Thousand Oaks, CA 91320.

Dataproducts Imaging Solutions S.A. de C.V., Av Circulo de la Amistad 2701, Mexicali, BC 21210, Mexico.

CAU, Inc., d/b/a Cartridges Are Us, 100 Raycraft Drive, Ithaca, MI 48847.

Shanghai Orink Infotech, International Co., Ltd., Room 307, No. 275–8 East Guoding Road, Shanghai, China 200433.

Orink Infotech International Co., Ltd., Unit 1205, 12F/L, Sino Plaza, 255 Gloucester Road, Causewat Bay, Hong Kong.

Zhuhai Rich Imaging Technology Co., Ltd., F4, B1, No. 7 Pingxiyi Road, Nanping S&T Industry Community, Zhuhai, Guangdong Province, China 519060.

Standard Image Co., Ltd., a/k/a Shanghai Orink Co., Ltd., Room 507–508, Building A, No. 1555, Kongjiang Road, Yangpu District, Shanghai, China 200092.

Zhuhai National Resources & Jingjie Imaging Products Co., Ltd., d/b/a Huebon Co., Limited, d/b/a Ink-Tank, 3/F, No. 1 Industrial Building, Pingdong 2 Road,Nanping Science & Technology Park, Zhuhai, Guangdong Province, China 519060.

Standard Image USA, Inc., d/b/a Imaging Standard Inc., 1621 East Saint Andrew Place, Santa Ana, CA 92705.

Printronic Corporation, d/b/a Printronic.com, d/b/a InkSmile.com, 1621 East Saint Andrew Place, Santa Ana, CA 92705.

Nukote, Inc., 2400 Dallas Parkway, Suite 230, Plano, TX 75093.

Nukote Internacional de Mexico, S.A. de C.V., Avenida del Parque 1175, Monterrey Technology Park, Cienega de Flores, Nuevo Leon, Mexico 65550.

Acecom, Inc.—San Antonio, d/b/a InkSell.com, 14833 Bulverde Road, San Antonio, TX 78247.

Atman, Inc., d/b/a pcRUSH.com, 1325 East El Segundo Boulevard, El Segundo, CA 90245.

Dexxxon Digital Storage, Inc., 7611 Green Meadows Drive, Lewis Center, OH 43035.

Discount Office Items, Inc., 302 Industrial Drive, Columbus, WI 53925.

Deal Express LLC, d/b/a Discount Office Items, 302 Industrial Drive, Columbus, WI 53925.

Do It Wiser LLC, d/b/a Image Toner, 1720 Cumberland Point Drive, Suite 21, Marietta, GA 30067.

E-Max Group, Inc., d/b/a Databazaar.com, 12070 Miramar Parkway, Miramar, FL 33025.

Green Project, Inc., 15335 Don Julian Road, Hacienda Heights, CA 91745.
GreenLine Paper Company, Inc., 631 South Pine Street, York, PA 17403.
IJSS Inc., d/b/a TonerZone.com, d/b/a InkJetSuperstore.com, 6380 Wilshire Boulevard, Suite 1018, Los Angeles, CA 90048.
Imaging Resources, LLC, 9434 Mason Avenue, Chatsworth, CA 91311.
Ink Technologies Printer Supplies, LLC, 7600 McEwen Road, Dayton, OH 45459.
Myriad Greeyn LLC, 2342 Croix Drive, Virginia Beach, VA 23451, Office World, Inc., 115 Cleveland Street, Eugene, OR 97402.
OfficeWorld.com, Inc., 115 Cleveland Street, Eugene, Oregon 97402.
OnlineTechStores.com, Inc., d/b/a SuppliesOutlet.com, 10381 Double R Boulevard, Reno, NV 89521.
SupplyBuy.com, Inc., 230 4th Avenue N, Suite 300D, Nashville, TN 37219.
Virtual Imaging Products Inc., 135 Ormont Drive, Unit #14/15, North York, Ontario, M9L 1N6.
Zinyaw LLC, d/b/a TonerPirate.com, 14781 Memorial Drive, Suite 1359, Houston, TX 77079.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order, or both, directed against the respondents.

By order of the Commission.
Issued: February 23, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–4742 Filed 2–28–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–344 (Third Review)]

Tapered Roller Bearings From China; Scheduling of a Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on tapered roller bearings from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* February 23, 2012.

FOR FURTHER INFORMATION CONTACT: Jennifer Merrill (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On November 4, 2011, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (76 FR 72213, November 22, 2011). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on May 31, 2012, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on June 19, 2012, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 13, 2012. A nonparty who has testimony that may

aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 14, 2012, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is June 11, 2012. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is July 2, 2012; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before July 22, 2012. On July 24, 2012, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 26, 2012, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.*

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: February 23, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–4741 Filed 2–28–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of RCRA Consent Decree

Notice is hereby given that on February 14, 2012, a proposed Consent Decree (''Decree'') in *United States* v. *Pure Earth Recycling, Inc. (f/k/a Casie Ecology Oil Salvage, Inc. and Mid-Atlantic Recycling Technologies, Inc.*), Civil Action No. 11–CV–00161–JBS–AMD, was lodged with the United States District Court for the District of New Jersey.

In this action the United States sought civil penalties and injunctive relief against Pure Earth Recycling under the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6928, in connection with the Settling Defendant's violations of RCRA at its Vineland, New Jersey Facility. Under the proposed Consent Decree, the Settling Defendant agrees to pay a civil penalty of $750,000 subject to certain circumstances; comply with all terms and provisions of RCRA; comply with all applicable state and federal hazardous waste regulations; and if the Settling Defendant resumes operations at its Facility, comply with the Standard Operating Procedures set forth in the Consent Decree. The terms of the settlement regarding the amount of the civil penalty are based upon representations made by the Settling Defendant concerning its ability to pay.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Pure Earth Recycling, Inc. (f/k/a Casie Ecology Oil Salvage, Inc. and Mid-Atlantic Recycling Technologies, Inc.*), Civil Action No. 11–CV–00161–JBS–AMD (D. N.J.), D.J. Ref. 90–7–1–09668.

During the public comment period, the Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–4761 Filed 2–28–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Acrylonitrile Standard

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration sponsored information collection request (ICR) titled, ''Acrylonitrile Standard,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before March 30, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation;

including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Occupational Safety and Health Administration, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: The Acrylonitrile Standard found at regulations 29 CFR 1910.1045 requires employers to monitor employee exposure to acrylonitrile, to provide medical surveillance, to train workers about the hazards of acrylonitrile, and to establish and maintain accurate records of worker exposure to acrylonitrile. These records are used by employers, workers, physicians, and the Government to ensure that workers are not harmed by exposure to acrylonitrile.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1218–0126. The current OMB approval is scheduled to expire on February 29, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on December 12, 2011 (76 FR 77267).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1218–0126. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, 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.

Agency: Occupational Safety and Health Administration.

Title of Collection: Acrylonitrile Standard.

OMB Control Number: 1218–0126.

Affected Public: Private Sector—Businesses or Other For-Profits.

Total Estimated Number of Respondents: 17.

Total Estimated Number of Responses: 5,654.

Total Estimated Annual Burden Hours: 2,299.

Total Estimated Annual Other Costs Burden: $146,718.

Dated: February 23, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–4718 Filed 2–28–12; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Vinyl Chloride Standard

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration sponsored information collection request (ICR) titled, ''Vinyl Chloride Standard,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before March 30, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Occupational Safety and Health Administration, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the Vinyl Chloride Standard and its information collection requirements is to provide protection for workers from the adverse effects associated with occupational exposure to vinyl chloride. Employers must monitor worker exposure, reduce worker exposure to permissible exposure limits, and provide medical examinations and other information to workers pertaining to vinyl chloride.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the

collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1218–0010. The current OMB approval is scheduled to expire on February 29, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on December 8, 2012 (76 FR 76766).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1218–0010. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, 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.

Agency: Occupational Safety and Health Administration.

Title of Collection: Vinyl Chloride Standard.

OMB Control Number: 1218–0010.

Affected Public: Private Sector—Businesses or Other For-Profits.

Total Estimated Number of Respondents: 26.

Total Estimated Number of Responses: 925.

Total Estimated Annual Burden Hours: 549.

Total Estimated Annual Other Costs Burden: $40,888.

Dated: February 23, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–4719 Filed 2–28–12; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Migrant and Seasonal Farmworker Monitoring Report and One-Stop Career Center Complaint/Referral Record

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration sponsored information collection request (ICR) titled, ''Migrant and Seasonal Farmworker Monitoring Report and One-Stop Career Center Complaint/Referral Record,'' as proposed to be revised, to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before March 30, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Forms related to the Migrant and Seasonal Farmworker Monitoring Report and One-Stop Career Center Complaint/Referral Record information collection are necessary as part of regulations 20 CFR parts 651, 653, and 658. Form ETA–5148 collects data that monitors and measures how State Workforce Agencies deliver services to Migrant and Seasonal Farm Workers (MSFWs). Form ETA–8429, the One-Stop Career Center Compliance Referral Record, is used to collect and document complaints filed by MSFWs and non-MSFWs regarding service delivery. While not affecting burden, minor changes have been made to ETA Form 8429, (1) In Part I, of item 8, increased the space provided for description of complaint, (2) in Part II, of items 2 and 3, added the word ''Job Service,'' and (3) Part II, item 9 at the bottom added ''Complaint resolved? b Yes b No—If 'No,' explain.''

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1205–0039. The current OMB approval is scheduled to expire on February 29, 2012; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on October 3, 2011 (76 FR 61115).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1205–0039. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, 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.

Agency: Employment and Training Administration (ETA).

Title of Collection: Migrant and Seasonal Farmworker (MSFW) Monitoring Report and One-Stop Career Center Complaint/Referral Record.

OMB Control Number: 1205–0039.

Affected Public: Individuals and Households, State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 3,050.

Total Estimated Number of Responses: 3,250.

Total Estimated Annual Burden Hours: 7,378.

Total Estimated Annual Other Costs Burden: $0.

Dated: February 23, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–4726 Filed 2–28–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Wage and Hour Division

Proposed Extension and Revision of the Approval of Information Collection Requirements

AGENCY: Wage and Hour Division, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Wage and Hour Division is soliciting comments concerning its proposal to extend Office of Management and Budget (OMB) approval of the Information Collections: Application for a Farm Labor Contractor or Farm Labor Contractor Employee Certificate of Registration; Motor Vehicle Safety for Transportation of Migrant and Seasonal Agricultural Workers. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before April 30, 2012.

ADDRESSES: You may submit comments, identified by Control Number 1235–0016, by either one of the following methods:

Email: WHDPRAComments@dol.gov.

Mail, Hand Delivery, Courier: Regulatory Analysis Branch, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for Office of Management and Budget approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Mary Ziegler, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TDD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. *Background:* The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) provides that no person shall engage in any farm labor contracting activity for any money or valuable consideration paid or promised to be paid, unless such person has a certificate of registration from the Secretary of Labor specifying which farm labor contracting activities such person is authorized to perform. *See* 29 U.S.C. 1802(7), 1811(a); 29 CFR 500.1(c), -.20(i), -.40. The MSPA also provides that a Farm Labor Contractor (FLC) shall not hire, employ, or use any individual to perform farm labor contracting activities unless such individual has a certificate of registration as a FLC or a certificate of registration as a Farm Labor Contractor Employee (FLCE) of the FLC that authorizes the activity for which such individual is hired, employed or used. 29 U.S.C. 1811(b); 29 CFR 500.1(c). Form WH–530 is an application used to obtain a Farm Labor Contractor License. This information collection is currently approved for use through June 30, 2012.

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) section 401 (29 U.S.C. 1841) requires, subject to certain exceptions, all Farm Labor Contractors (FLCs), Agricultural Employers (AGERs), and Agricultural Associations (AGASs) to ensure that any vehicle they use or cause to be used to transport or drive any migrant or seasonal agricultural worker conforms to safety and health standards prescribed by the Secretary of Labor under the MSPA and with other applicable Federal and State safety standards. These MSPA safety standards address the vehicle, driver, and insurance. The Wage and Hour Division (WHD) has created Forms WH–514, WH–514a, and WH–515, which allow FLC applicants to verify to the WHD that the vehicles used to transport migrant/seasonal agricultural workers meet the MSPA vehicle safety standards and that anyone who drives such workers meets the Act's minimum physical requirements. The WHD uses the information in deciding whether to authorize the FLC/FLC Employee applicant to transport/drive any migrant/seasonal agricultural worker(s) or to cause such transportation. Form WH–514 is used to verify that any vehicle used or caused to be used to transport any migrant/seasonal agricultural worker(s) meets the Department of Transportation (DOT) safety standards. When the adopted DOT rules do not apply, FLC applicants seeking authorization to transport any migrant/seasonal agricultural workers use Form WH–514a to verify that the vehicles meet the DOL safety standards and, upon the vehicle meeting the required safety standards, the form is completed. Form WH–515 is a doctor's

certificate used to document that a motor vehicle driver or operator meets the minimum DOT physical requirements that the DOL has adopted. This information collection is currently approved for use through September 30, 2013. **Note:** The Paperwork Reduction Act package for the WH–514, WH–514A and WH–515 formerly approved under the Information Collection 1235–0017 are being rolled into this information collection.

II. *Review Focus:* The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. *Current Actions:* The DOL seeks to extend the information collection requests for the Application for a Farm Labor Contractor or Farm Labor Contractor Employee Certificate of Registration; Motor Vehicle Safety for Transportation of Migrant and Seasonal Agricultural Workers and the Doctor's Certification (minimum physical requirements to drive a vehicle). Additionally, DOL seeks the approval of the revisions of the subject information collection requirements in the Farm Labor Contractor/Farm Labor Contractor Employee Application (WH–530) in order to verify that FLCs, AGERs, and AGASs have complied with all applicable safety standards. Transportation Authorization (T/A) and/or Driving Authorization (D/A) on the Farm Labor Contractor/Farm Labor Contractor Employee License may only be obtained once vehicle inspection (WH–514, -514a) and the Doctor's Certification (WH–515) have been provided.

Type of Review: Extension with revisions.

Agency: Wage and Hour Division.

Titles: Application for a Farm Labor Contractor or a Farm Labor Contractor Employee Certificate of Registration; Vehicle Mechanical Inspection Report for Transportation Subject to Department of Transportation Requirements; Vehicle Mechanical Inspection Report for Transportation Subject to Department of Labor Safety Standards; MSPA Doctor's Certificate.

OMB Number: 1235–0016.

Agency Numbers: Forms WH–514, WH–514a, WH–515, WH–530.

Affected Public: Businesses or other for-profits, Farms.

Respondents: 21,139.

Total Annual Responses: 21,139.

Estimated Total Burden Hours: 8,761.

Estimated Time per Response: 5 minutes for the vehicle mechanical inspection reports (WH–514 or WH–514a) and 20 minutes for the MSPA Doctor's Certification (WH–515) and 30 minutes for the Farm Labor Contractor Application (WH–530).

Frequency: On Occasion, but no more often than annual.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $356,251.

Dated: February 23, 2012.

Mary Ziegler,

Director, Division of Regulations, Legislation & Interpretation.

[FR Doc. 2012–4806 Filed 2–28–12; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL SCIENCE FOUNDATION

Committee Management; Notice of Establishment

The Director of the National Science Foundation has determined that the establishment of the Advisory Committee for Innovation Corps is necessary and in the public interest in connection with the performance of duties imposed upon the National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Advisory Committee for Innovation Corps (#80463).

Purpose: The Committee will provide advice to the National Science Foundation (NSF) on the direction, development, and enhancement of the Innovation Corps (I–Corps) program. The I–Corps program creates an opportunity to assess the readiness of emerging technology concepts and research results that show the immediate potential for broader applicability and impact. These results may be translated into valuable new technologies and products with near-term benefits to business, the economy and society. Specialized guidance may be addressed through the use of subcommittees, task groups or committees of visitors (COVs) within the structure of the Committee.

Responsible NSF Official: Dedric A. Carter, Senior Advisor for Strategic Initiatives, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: 703/292–8002.

Dated: February 23, 2012.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2012–4758 Filed 2–28–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Membership of National Science Foundation's Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Announcement of Membership of the National Science Foundation's Senior Executive Service Performance Review Board.

SUMMARY: This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESSES: Comments should be addressed to Director, Division of Human Resource Management, National Science Foundation, Room 315, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Dr. Judith S. Sunley at the above address or (703) 292–8180.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Cora B. Marrett, Deputy Director, Chairperson.

Richard A. Behnke, Head, Geospace Section.

Eugene F. Hubbard, Director, Office of Information and Resource Management and Chief Human Capital Officer.

Deborah F. Lockhart, Deputy Director, Division of Information and Intelligent Systems.

Martha A. Rubenstein, Director, Office of Budget, Finance and Award Management, and Chief Financial Officer.

Brian W. Stone, Director, Antarctic Infrastructure and Logistics Division.

Mark L. Weiss, Director, Division of Behavioral and Cognitive Sciences.

Judith S. Sunley, Director, Division of Human Resource Management and PRB Executive Secretary.

Dated: February 21, 2012.

Judith S. Sunley,

Director, Division of Human Resource Management.

[FR Doc. 2012–4640 Filed 2–28–12; 8:45 am]

BILLING CODE 7555–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Corporate Administration Committee Board of Directors; Sunshine Act Meeting

TIME AND DATE: 1 p.m., Thursday, March 8, 2012.

PLACE: 1325 G Street NW., Suite 800, Boardroom, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Erica Hall, Assistant Corporate Secretary, (202) 220–2376; *ehall@nw.org.*

AGENDA:

I. Call to Order
II. Executive Session
III. Severance Policy
IV. Board Committee Composition/ Elections/Appointments
V. Washington, DC Lease Update
VI. Human Resources Updates
VII. Benefit Activities
VIII. Strategic Planning Update
IX. Adjournment

Erica Hall,

Assistant Corporate Secretary.

[FR Doc. 2012–4908 Filed 2–27–12; 11:15 am]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025 and 52–026; NRC–2008–0252]

Vogtle Electric Generating Plant, Units 3 and 4; Issuance of Combined Licenses and Limited Work Authorizations and Record of Decision

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Combined Licenses (NPF–91 and NPF–92) and Limited Work Authorization (LWA) (Nos. LWA–001 and LWA–002) and Record of Decision Issuance.

FOR FURTHER INFORMATION CONTACT: Ravindra Joshi, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6191; email: *ravindra.joshi@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to Title 10 of the Code of Federal Regulations (10 CFR) 2.106, the Nuclear Regulatory Commission (NRC) is providing notice of the issuance of Combined Licenses (COL), NPF–91 and NPF–92 and Limited Work Authorizations LWA–001 and LWA–002 to Southern Nuclear Operating Company (SNC), Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia, an incorporated municipality in the State of Georgia acting by and through its Board of Water, Light and Sinking Fund Commissioners. With respect to the application for COLs and for LWAs filed by SNC, on behalf of itself and the other four entities named above, the NRC finds that the applicable standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commissions regulations have been met. The NRC finds that any required notifications to other agencies or bodies have been duly made and that there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, as amended, the provisions of the Act, and the Commission regulations. Furthermore, the NRC finds that the licensees are technically and financially qualified to engage in the activities authorized, and that issuance of the license will not be inimical to the common defense and security or to the health and safety of the public. Finally, with respect to the LWAs, the NRC finds that there are no unresolved safety issues related to the activities that would constitue good cause for withholding the authorizations.

Accordingly, the COLs and LWAs were issued on February 10, 2012, and are effective immediately.

II. Further Information

The NRC has prepared a Final Safety Evaluation Report (FSER) and Final Supplemental Environmental Impact Statement (FSEIS) that document the information reviewed and NRC's conclusion. The Commission has also issued its Memorandum and Order documenting its final decision on the uncontested hearing held on September 27–28, 2011, which serves as the Record of Decision in this proceeding. In accordance with 10 CFR 2.390 of the NRC's ''Rules of Practice,'' details with respect to this action, including the FSER and accompanying documentation included in the combined license package, as well as the Commission's hearing decision, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, persons can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

ML110450302 ''Final Safety Evaluation Report for Combined Licenses for Vogtle Electric Generating Plant, Units 3 and 4''
ML11076A010 NUREG–1947, ''Final Supplemental Environmental Impact Statement for Combined Licenses for Vogtle Electric Generating Plant, Units 3 and 4''
ML11180A086 VEGP COL Application—Submittal 8 of the application
ML12040A192 Commission's Memorandum and Order on the uncontested hearing (record of decision)
ML112991101 Combined License No. NPF–91
ML113060407 Combined License No. NPF–92
ML113350133 Limited Work Authorization No. LWA–001
ML113350143 Limited Work Authorization No. LWA–002

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room (PDR) Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by email to pdr.resource@nrc.gov. The documents are also available at *http://www.nrc.gov/reactors/new-reactors/col.html.*

These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 13th day of February 2012.

Mark Tonacci,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2012–4824 Filed 2–28–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–3103; NRC–2010–0264]

Special Nuclear Material License Amendment From Louisiana Energy Services, LLC, for the National Enrichment Facility, Hobbs, NM

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of environmental assessment and finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Mary T. Adams, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–492–3113; email: *Mary.Adams@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering a request to amend special nuclear material license SNM–2010, held by Louisiana Energy Services, LLC, (LES), under which LES operates a uranium enrichment facility in Eunice, New Mexico. On May 6, 2011, in accordance with Title 10 of the Code of Federal Regulations (10 CFR) Section 70.34, LES requested an amendment to SNM–2010 that would extend the license expiration date to recapture the 48 months that elapsed from the 2006 license issuance date to when authorization to introduce uranium hexafluoride (UF_6) into Cascade 1 was granted on June 10, 2010 (ML11131A048). During this 48-month period, construction, preoperational testing, and an operational readiness review were ongoing. The proposed action would extend the expiration date of SNM–2010 from June 22, 2036, to June 9, 2040. In response to agency questions about the changed operational schedule, LES provided a clarification of the license amendment request, dated November 23, 2011 (ML11329A080).

II. Background

On June 23, 2006, the NRC issued SNM–2010 to LES authorizing the construction and operation of the National Enrichment Facility (NEF) in New Mexico. License Condition 13 of SNM–2010 states that the license will expire 30 years after the date of license issuance. In June 2005, to support the issuance of SNM–2010, the NRC issued a final environmental impact statement (EIS) for the NEF (NUREG–1790) (ML051730238 and ML051730292) in accordance with 10 CFR Part 51 (Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions), which implements the National Environmental Policy Act. The EIS concluded that operation of the NEF for 30 years will generally have small to moderate effects on the public and the environment.

III. Environmental Assessment

In support of the proposed action, the NRC has prepared an environmental assessment (EA), set forth below. Based on the EA, the NRC has concluded that a Finding of No Significant Impact is appropriate regarding the proposed action.

Description of the Proposed Action

The proposed action is to revise the expiration date of SNM–2010 from June 22, 2036, to June 9, 2040. Table 2–1 of the 2005 EIS (NUREG–1790) set forth an operation schedule for the NEF as follows:

Task	Start date
Submit license application to NRC	12/2003
Begin construction of facility	8/2006
Begin operation of first cascade	10/2008
Achieve full production output	10/2013
Operate at full capacity	10/2013–10/2027
Submit decommissioning plan to NRC	4/2025
Complete construction of decontamination and decommissioning facility	4/2027
Cease all operation of cascades	4/2033
Complete decommissioning of facility	4/2036

In the license amendment request, LES provided an updated schedule of major steps associated with the proposed action, shown on the following table:

Milestone	Estimated date (actual date)
Submit Facility License Application	December 2003 (December 12, 2003)
Initiate Facility Construction	August 2006 (August 2006)
Start First Cascade	October 2008 (June 10, 2010)
Achieve Full Nominal Production Output	May 2014
Submit License Termination Plan to NRC	April 2029
Complete Construction of D&D Facility	April 2031
D&D Completed	April 2040

Need for the Proposed Action

In the license amendment request, LES noted that because 48 months of the original license had elapsed before the facility actually began its operations, the facility's operational period would be shorter than the 30 years authorized by the license. LES needs the proposed license expiration date extension to operate the facility for 30 years.

Environmental Impacts of the Proposed Action

The 2005 EIS (NUREG–1790) determined that the environmental impacts of the license issuance that

would authorize operation for 30 years were small to moderate. These findings were summarized in Table 2–9 of the EIS. The license extension would shift the operating period by four years (i.e., changing it from 2006–2036 to 2010–2040). Because the facility will still operate for 30 years as originally envisioned in the EIS, environmental impacts relating to the construction of the facility or its duration of operations will not be significantly different from those documented in the EIS. An assessment of each of the environmental impacts examined in Chapter 4 of the EIS is discussed below:

Land use impacts are described in EIS Section 4.2.1. Because the footprint of the LES facility and the duration of its operations will be unchanged by the license extension, there is no impact on land use beyond those previously evaluated in the EIS.

Historical and cultural resource impacts are described in EIS Section 4.2.2. Based on the successful completion of the identification of historic and archaeological sites, National Register of Historic Places evaluations, and effective treatment of potential adverse effects to historic properties, along with the existence of written procedures to provide immediate notification in the event of inadvertent discovery of cultural resources, the potential impacts on historical and cultural resources at the proposed NEF site were expected to be small. No additional impacts will occur due to the license extension because LES will continue to follow the written procedures in the event of an inadvertent discovery of cultural resources.

Visual and scenic resource impacts are described in EIS Section 4.2.3. A delay in decommissioning the LES facility allowed by the license extension would extend the visual impact by 4 years; however, the visual impact of the construction and operation of the facility was initially determined to be small, and will not be significantly changed by the brief license extension.

Air quality impacts are described in EIS Section 4.2.4. A change in the years of enrichment operations will not change the facility's impact on air quality. Air quality impacts are evaluated on an annual basis, and the license extension will only shift the years in which the effluents are released to a later period, but will not change the amount of annual effluents.

Impacts on geology and soils are described in EIS Section 4.2.5. Most impacts on geology and soils occurred during construction, and were determined to be small. Regarding impacts from operations, accumulation of uranium and fluoride in the Treated Effluent Evaporative Basin was evaluated over an operating period of 30 years (EIS Section 4.2.12.2), and since the license amendment will not increase the operating period above 30 years, this accumulation will not change as a result of the license extension.

Impacts on water resources are described in EIS Section 4.2.6. LES will obtain its water from the Eunice and Hobbs city water supplies. Eunice and Hobbs obtain the water from the Ogallala aquifer. LES estimates a peak use of 23.1 million gallons per year, approximately 695 million gallons over the 30-year life of the facility. The EIS adequately evaluated the water use impacts of 30 years of plant operations, and the brief proposed license extension only changes which years the plant will operate, but not the duration of plant operations.

Impacts on ecological resources during operations are described in EIS Section 4.2.7, and were determined to be small because no additional lands will be disturbed beyond those utilized during construction and LES will implement wildlife management practices. The license extension will not change the impact on ecological resources because LES will continue to implement its wildlife management practices during the period of the license extension.

Socioeconomic impacts during plant operation are described in EIS Section 4.2.8. The plant payroll during operations is projected to be approximately $10.9 million in 2004 dollars per year of operation. Therefore, extension of the license operating term will extend this moderate annual impact on local employment for four more years.

Environmental justice impacts are described in EIS Section 4.2.9. It was determined that there were no disproportionately high and adverse impacts to minority or low-income populations from either construction or normal operations, rather, all impacts were small. Shifting the period of operations by four years will not change the impact on these populations.

Noise impacts are described in EIS Section 4.2.10. They were determined to be small for construction and operations because the nearest resident is approximately 2.6 miles from the facility. The proposed license extension will not significantly change noise impacts because the plant will still operate for 30 years as envisioned in the EIS.

Transportation impacts are described in EIS Section 4.2.11. Impacts during post-construction normal operations were found to be small. The likelihood of transportation accidents with chemical or radiological consequences were evaluated on an annual basis and the impacts were found to be small to moderate. Shifting the plant's period of operation by four years will not change the annual likelihood or the consequences of transportation accidents.

Public and occupational health impacts are described in EIS Section 4.2.12. The radiological and non-radiological impacts of normal operations were evaluated on an annual basis, found to be small, and during the brief license extension, annual exposure to both workers and the public will remain the same as previously evaluated in the EIS.

EIS Section 4.2.13 describes public and occupational impacts from accidents during operations. These impacts were determined to be small to moderate, and will not significantly change during the period of license extension. The impacts of industrial accidents, including rupture of an overfilled and/or overheated cylinder, were determined to be small to moderate. The likelihood of accidents is significantly reduced by specified design features and will not significantly change during the period of the license extension.

EIS Section 4.2.14 describes waste management impacts. The impacts of solid wastes on local land disposal capacity were evaluated on an annual basis, were determined to be small, and will not be increased by the license extension because the previously evaluated annual volume of solid wastes is a small fraction of the Lea County landfill capacity and will not change. The impacts of DUF_6 waste management were determined to be small to moderate, and will not be changed by the license extension because the plant will not generate any more DUF_6 than was originally evaluated in the EIS.

The EIS considered cumulative impacts in Section 4.4. The license extension would not increase any cumulative environmental impacts because the EIS previously evaluated cumulative impacts for a full 30 years of facility operations.

Environmental Impacts of Alternatives to the Proposed Action

An alternative to the proposed action is for the NRC to deny the request for the license extension. If this ''no-action'' alternative were adopted, LES would need to cease operations after 26 years in accordance with the original license expiration date (i.e., in 2036). Although

the environmental impacts that would be caused by 26 years of operation would be slightly less than those that would be caused by the full 30 years of operation previously evaluated in the EIS, the difference is not significant. Therefore, denial of the amendment request would result in no significant change in the environmental impacts previously evaluated in the EIS.

Alternative Use of Resources

The proposed action does not involve the use of any different resources than those considered in the EIS for NEF (NUREG–1790).

List of Agencies and Persons Consulted and Identification of Sources Used

The NRC staff consulted the New Mexico Environment Department (NMED) in December 2011 for their review and comment on the draft EA/FONSI. In an email response dated December 28, 2011 (ML120370017), the NMED indicated that it had no comments on the EA and supported approval of the license amendment.

The NRC staff has determined that consultation with the U.S. Fish and Wildlife Service for compliance with Section 7 of the Endangered Species Act is not necessary because the proposed action does not have the potential to affect listed species or critical habitat.

The NRC staff has determined that the proposed extension of the license expiration date is not a type of activity that has potential to cause effects on historic properties because it will not authorize any additional activities that were not previously evaluated in the final EIS for NEF (NUREG–1790) in Section 4.2.2, and because, as noted above, LES will continue to follow the written procedures in the event of an inadvertent discovery of cultural resources. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

Finding of No Significant Impact

The NRC reviewed LES's license amendment request to revise license condition 13 to extend the expiration date from 2036 to 2040, and found no significant environmental impacts from the shift in enrichment operation dates. On the basis of this EA, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an EIS for the proposed action.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are:

ML11329A080	Clarification of License Amendment Request 10–13, November 23, 2011.
ML051730238	2005/06/30–NUREG–1790, Vol. 1, ''Environmental Impact Statement for the Proposed National Enrichment Facility in Lea County, New Mexico, Chapters 1 through 10 and Appendices A through G. Final Report.''
ML051730292	2005/06/30–NUREG–1790, Vol. 2, ''Environmental Impact Statement for the Proposed National Enrichment Facility in Lea County, New Mexico, Appendices H through J. Final Report.''
ML120370017	Email from Butch Tongate, New Mexico Environment Department, December 28, 2011.

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 10th day of February 2012.

Brian W. Smith,

Chief, Uranium Enrichment Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission.

[FR Doc. 2012–4823 Filed 2–28–12; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Requests Under OMB Review

AGENCY: Peace Corps.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Peace Corps will submit the following information collection request to the Office of Management and Budget (OMB) for approval. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Peace Corps invites the general public to comment on this request revision of a currently approved collection, Peace Corps 50th Anniversary Archive Project (OMB Control Number: 0420–0542). The title of the information collection will change from Peace Corps 50th Anniversary Archives to Peace Corps Digital Library. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Submit comments on or before March 30, 2012.

ADDRESSES: Comments should be addressed to Denora Miller, Freedom of Information Act Officer. Denora Miller can be contacted by telephone at 202–692–1236 or email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Denora Miller at Peace Corps address above.

SUPPLEMENTARY INFORMATION: The 50th Anniversary Archive Project collects stories and photographs from Returned Peace Corps Volunteers along with basic contact information (name, phone number, email address) and information about their Peace Corps service, such as dates of service, geographic location, and sector of service.

Method: The information is collected from an online form.

Old Title: Peace Corps 50th Anniversary Archive Project.

New Title: Peace Corps Digital Library.

OMB Control Number: 0420–0542.

Type of Information Collection: Revision of a currently approved collection.

Affected Public: Returned Peace Corps Volunteer and general public.

Respondents' Obligation To Reply: Voluntary.

BURDEN TO THE PUBLIC

(a) Estimated number of respondents	1,000.
(b) Frequency of response	one time.
(c) Estimated average burden per response	15 minutes.
(d) Estimated total reporting burden	250 hours.
(e) Estimated annual cost to respondents	$0.00.

General Description of Collection: This information is used to add assets to the digital library on the Peace Corps Web site; provide stories and photos for use in exhibits, news articles and events about Peace Corps; assist in documenting the history of the Peace Corps as experienced by its Volunteers through the years.

Request for Comment: Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps Response, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice issued in Washington, DC, on February 24, 2012.

Garry W. Stanberry,

Acting Associate Director, Management.

[FR Doc. 2012–4859 Filed 2–28–12; 8:45 am]

BILLING CODE 6051–01–P

PEACE CORPS

Public Availability of Office of Acquisitions and Contract Management FY 2011 Service Contract Inventory

AGENCY: United States Peace Corps.

ACTION: Notice of public availability of FY 2011 Service Contract Inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), the Office of Acquisitions and Contract Management is publishing this notice to advise the public of the availability of the FY 2011 Service Contract inventory and FY2010 Analysis Report. This inventory provides information on service contract actions over $25,000 that were made in FY 2011. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.* The Office of Acquisitions and Contract Management has posted its inventory and a summary of the inventory on the Peace Corps homepage at the following link: *http://www.peacecorps.gov/open/.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Sandra R. Harrell in the Office of Acquisitions and Contract Management at 202–692–1107 or *sharrell@peacecorps.gov.*

Dated: February 21, 2012.

Sandra R. Harrell,

Chief of Procurement Policy, Office of Acquisitions and Contract Management.

[FR Doc. 2012–4763 Filed 2–28–12; 8:45 am]

BILLING CODE 6015–01–P

POSTAL REGULATORY COMMISSION

[Docket No. R2012–6; Order No. 1252]

Postal Service Pricing Proposal

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently Postal Service filing concerning a Summer 2012 promotion offering discounts for First-Class Mail and Standard mailing with mobile barcodes or other technology. This notice addresses procedural steps associated with this filing.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

DATES: *Comments are due:* March 12, 2012.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Postal Service Filing
III. Commission Action
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I. Introduction

On February 21, 2012, the Postal Service filed a notice with the Commission announcing its intent to adjust prices for several market dominant products within First-Class Mail and Standard Mail pursuant to 39 U.S.C. 3622 and 39 CFR 3010.[1] The adjustment is a 2 percent discount on the prices for First-Class Mail and Standard Mail letters, flats, and cards (presort and automation), which include a qualifying mobile barcode or similar print technology inside or on the qualifying mailpieces (2012 Promotion). *Id.* at 1. The 2012 Promotion is proposed to take effect at 12:01 a.m. on July 1, 2012 and will expire at 11:59 p.m. on August 31, 2012. *Id.*

II. Postal Service Filing

Incentive program. The Postal Service proposes an upfront 2 percent discount on First-Class Mail and Standard Mail letters, flats, and cards (presort and automation) that include, in or on the mailpiece, a qualifying mobile barcode. *Id.* The mobile barcode must direct the recipients of the mailpieces to a mobile-optimized Web site that facilitates the purchase of a product or service, or to a personalized mobile Web site that is tailored to the recipient. *Id.* at 1, 4.

The Postal Service states that the 2012 Promotion is designed to encourage mailers to accelerate their integration of more advanced mobile commerce and personalization techniques into their direct mail campaigns. *Id.* at 4. Participants will be required to register for and accept the terms of the 2012 Promotion at least 24 hours prior to

[1] United States Postal Service Notice of Market-Dominant Price Adjustment, February 21, 2012 (Notice).

their first qualifying mailing. *Id.* at 5. Participants must disclose which permits will be participating in the promotion and agree to participate in a survey at the end of the promotional period. *Id.* The Postal Service plans to open registration around May 1, 2012. *Id.*

The Postal Service will require the mailings to be submitted electronically via mail.dat, mail.xml or Postal Wizard. *Id.* Mailers must affirmatively claim the 2012 Promotion on their electronic postage submissions and certify that each mailpiece contains a mobile barcode. *Id.* Mailers must claim the 2012 Promotion discount at the time of mailing. *Id.* Postage must be paid using a permit imprint, pre-cancelled stamp permit, or qualifying meter mail. *Id.*

Compliance with 39 U.S.C. 101(d). In its FY 2010 Annual Compliance Determination Report, the Commission directed the Postal Service to increase the cost coverage of the Standard Mail Flats product through a combination of above-average price adjustments and cost reductions.[2] Although the Postal Service acknowledges that the 2012 Promotion will have the short-term effect of lowering Standard Mail Flats postage revenues, it contends that the long-term effect will be to encourage future revenue growth in Standard Mail Flats and other products by improving the value of direct mail to advertisers. Notice at 8. Thus, it concludes that the 2012 Promotion complies with the Commission's directive.

Impact on the price cap. The Postal Service will not calculate the cap implication of the discount as described in rule 3010.14(b)(1) through (4). *Id.* at 9. The Postal Service states that, consistent with past limited-availability discounts, it intends to essentially ignore the effect of the price decrease resulting from the program on the price cap for both future and current prices. *Id.*

Objectives and factors, workshare discounts, and preferred rates. The Postal Service lists the relevant objectives and factors of 39 U.S.C. 3622, and claims the program ''[t]o a large extent * * * does not substantially alter the degree to which First-Class Mail and Standard Mail prices already address'' the objectives and factors. *Id.* at 9–13. In particular, the Postal Service contends that the 2012 Promotion is an example of the increased pricing flexibility under the Postal Accountability and Enhancement Act (objective 4), and will encourage new mail volumes, which will have the effect of enhancing the financial position of the Postal Service (objective 5). *Id.* at 10. Similarly, the Postal Service claims that the 2012 Promotion encourages increased mail volume (factor 7) and will not imperil the ability of First-Class Mail or Standard Mail to cover its attributable costs (factor 2). *Id.* at 13.

According to the Postal Service, the 2012 Promotion will not impact current workshare discounts. *Id.* As the 2012 Promotion does not exclude any mailers, the Postal Service asserts that it will not affect compliance with any preferred rate requirements. *Id.*

Mail Classification Schedule (MCS). The Postal Service provides proposed MCS language in Appendix A of its Notice. It outlines the proposed changes in the MCS for the relevant products. *Id.,* Appendix A.

III. Commission Action

The Commission establishes Docket No. R2012–6 to consider all matters related to the Notice. The Commission's rules provide for a 20-day comment period starting from the date of the filing of the Notice. *See* 39 CFR 3010.13(a)(5). Interested persons may express views and offer comments on whether the planned changes are consistent with the policies of 39 U.S.C. 3622 and 39 CFR 3010. Comments are due no later than March 12, 2012.

The Commission appoints Derrick D. Dennis to represent the interests of the general public in this proceeding.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. R2012–6 to consider matters raised by the Postal Service's February 21, 2012 Notice.

2. Interested persons may submit comments on the planned price adjustments. Comments are due no later than March 12, 2012.

3. Pursuant to 39 U.S.C. 505, Derrick D. Dennis is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Secretary shall arrange for publication of this notice in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2012–4787 Filed 2–28–12; 8:45 am]

BILLING CODE P

[2] Docket No. ACR2010, Annual Compliance Determination Report, March 29, 2011, at 106.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66449; File No. SR–CBOE–2012–018]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Correct Rule Numbering Errors

February 23, 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 February 15, 2012, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') 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 Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) 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 Substance of the Proposed Rule Change

CBOE proposes to correct duplicative numbering errors in CBOE Rules 5.5 and 24.9 that were unintentionally created. No substantive changes are proposed in this filing. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at 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 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–CBOE–2011–053, an error was inadvertently made to the numbering of Interpretations and Policies under Rules 5.5 and 24.9. In that filing, the Exchange added Interpretation and Policy .19 to Rule 5.5 and Interpretation and Policy .12 to Rule 24.9 to permit the Exchange to list additional expiration months on options classes opened for trading on the Exchange if such expiration months are open for trading on at least one other national securities exchange.[5] Interpretation and Policy .19 to Rule 5.5 and Interpretation and Policy .12 to Rule 24.9, however, had already been established.[6] This filing is being made to correct the duplicative numbering contained in Rules 5.5 and 24.9 by re-numbering the provisions added in SR–CBOE–2011–053 as new Interpretation and Policy .20 to Rule 5.5 and new Interpretation and Policy .13 to Rule 24.9. No substantive changes to CBOE rules would be made by this proposal.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[7] of the Act and the rules and regulations under the Act, in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed correction will protect investors and the public interest by eliminating potential confusion that could be caused by duplicative numbering in CBOE's rules.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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[9] and Rule 19b–4(f)(6) thereunder.[10]

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 the proposal corrects ordering errors and makes no substantive changes to the Exchange's rules and will eliminate any potential confusion that could be caused by duplicative rule numbering. Therefore, the Commission designates the proposal operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–018 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–2012–018. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–018 and should be submitted on or before March 21, 2012.

[5] *See* Securities Exchange Act Release No. 64614 (June 7, 2011), 76 FR 34278 (June 13, 2011) (SR–2011–053) [sic].

[6] *See* Securities Exchange Act Release Nos. 63927 (February 17, 2011), 76 FR 10412 (February 24, 2011) (noticing SR–CBOE–2011–08) and 64187 [sic] (April 5, 2011), 76 FR 20067 [sic] (April 11, 2011) (order approving SR–CBOE–2011–08). In SR–CBOE–2011–08 the Exchange added new Interpretation and Policy .19 to Rule 5.5. and new Interpretation and Policy .12 to Rule 24.9 to permit the listing of strike prices in $0.50 intervals where the strikes price is less than $75, and strike prices in $1.00 intervals where the strike price is between $75 and $150 for option series used to calculate volatility indexes.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). 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 the five-day prefiling requirement in this case.

[11] 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).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4727 Filed 2–28–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66450; File No. SR–NYSEAmex–2012–14]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Correcting the Formatting of a Recently Adopted NYSE Amex Rule

February 23, 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 February 17, 2012, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') 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 proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. 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 correct the formatting of a recently adopted NYSE Amex Rule. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to correct the formatting of a recently adopted NYSE Amex Rule. Specifically, the Exchange recently codified in Commentary .05 of NYSE Amex Rule 903 the ability to allow trading of options on iShares® Silver Trust (''SLV'' or ''SLV Trust'') and United States Oil Fund (''USO'' or ''USO Fund'') at $0.50 strike price intervals where the strike price is less than $75. In adopting the rule change, the Exchange adopted new paragraph (b) in Commentary .05 and designated the existing language in Commentary .05 as paragraph (a). In this filing, the Exchange is proposing to change the references to (a), (b) and (c) in paragraph (a) to (i), (ii) and (iii). Other than this reformatting, the Exchange is not proposing any changes to the text of Commentary .05.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[4] of the Act, in general, and furthers the objectives of Section 6(b)(5),[5] 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, 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 change, which would correct the formatting of a recently amended Exchange rule, would provide more clarity to ATP Holders and the investing public with respect to that rule.

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

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[6] and Rule 19b–4(f)(6) thereunder.[7]

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 the proposal would correct the formatting of a recently amended Exchange rule[8] and thereby provide more clarity to ATP Holders and the investing public with respect to that rule. Therefore, the Commission designates the proposal operative upon filing.[9]

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.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 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 Commission has waived the five-day prefiling requirement.

[8] *See* Securities Exchange Act Release No. 66349 (February 7, 2012), 77 FR 7637 (February 13, 2012) (SR–NYSEAmex–2012–09).

[9] 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).

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–NYSEAmex–2012–14 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–NYSEAmex–2012–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2012–14 and should be submitted on or before March 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4764 Filed 2–28–12; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66454; File No. SR–FINRA–2011–073]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of Proposed Rule Change Relating to Establishing a Governmental Accounting Standards Board Accounting Support Fee

February 23, 2012.

I. Introduction

On December 20, 2011, the Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 adopt Section 14 to Schedule A of the FINRA By-Laws to establish an accounting support fee to adequately fund the annual budget of the Governmental Accounting Standards Board (''GASB''). The proposed rule change was published for comment in the **Federal Register** on January 9, 2012.[3] The Commission received nine comment letters on the proposed rule change.[4] On February 13, 2012, FINRA submitted a response letter to the comments.[5] This order grants approval of the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66080 (January 3, 2012), 77 FR 1119 (''Notice'').

[4] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from David T. Bellaire, Esq., General Counsel and Director of Government Affairs, Financial Services Institute, dated January 30, 2012 (''FSI Letter''); Eric Berman, CPA—Chair, Financial Management Standards Board, Association of Government Accountants, dated January 30, 2012 (''AGA Letter''); David L. Cohen, Managing Director, Associate General Counsel, Securities Industry and Financial Markets Association, dated January 30, 2012 (''SIFMA Letter''); Jeffrey L. Esser, Executive Director and Chief Executive Officer, Government Finance Officers Association, Robert O'Neill, Executive Director, International City/County Management Association, Larry E. Naake, Executive Director, National Association of Counties, Donald J. Borut, Executive Director, National League of Cities, and Tom Cochran, CEO and Executive Director, United States Conference of Mayors, dated January 30, 2012 (''Associations Letter''); John T. Hicks, President, National Association of State Budget Officers, dated January 30, 2012 (''NASBO Letter''); Ronald L. Jones, President, National Association of State Auditors, Comptrollers and Treasurers, dated January 30, 2012 (''NASACT Letter''); Michael Nicholas, Chief Executive Officer, Bond Dealers of America, dated January 30, 2012 (''BDA Letter''); Martin J. Benison, Comptroller, Office of the Comptroller, Commonwealth of Massachusetts, dated January 24, 2012 (''Massachusetts Letter''); and Chris Melton, Sr., dated January 19, 2012 (''Melton Letter'').

[5] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Brant K. Brown, Associate General Counsel, FINRA, dated February 13, 2012 (''FINRA Response Letter'').

II. Description of the Proposed Rule Change

The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') was signed into law by President Obama on July 21, 2010.[6] As added by Section 978 of the Dodd-Frank Act, Section 19(g) of the Securities Act of 1933 (''Securities Act'') gives the Commission the authority to require a national securities association to establish a reasonable annual accounting support fee to adequately fund the annual budget of the GASB (''GASB Accounting Support Fee''), and rules and procedures to provide for the equitable allocation, assessment, and collection of the GASB Accounting Support Fee from the association's members.[7] On May 11, 2011, the Commission exercised this authority and issued an order requiring FINRA to establish (a) a reasonable annual accounting support fee to adequately fund the annual budget of the GASB; and (b) rules and procedures, in consultation with the principal organizations representing State governors, legislators, local elected officials, and State and local finance officers, to provide for the equitable allocation, assessment, and collection of the accounting support fee from its members, and the remittance of all such accounting support fees to the FAF.[8]

In response to the Commission's order of May 11, 2011, FINRA proposed new Section 14 (Accounting Support Fee for Governmental Accounting Standards Board) to Schedule A of the FINRA By-Laws to establish the GASB Accounting Support Fee. The proposed rule change would assess the fee based on FINRA members' municipal securities trading volume reported to the Municipal Securities Rulemaking Board (''MSRB''). FINRA stated its belief that basing the GASB Accounting Support Fee on reliable and timely reporting data will ensure the accuracy of the fee and that using transaction data to apportion the

[6] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203, 124 Stat. 1376 (2010).

[7] *See* 15 U.S.C. 77s(g). For purposes of the GASB Accounting Support Fee, the annual budget of the GASB is the annual budget reviewed and approved according to the internal procedures of the Financial Accounting Foundation (''FAF''). *See* 15 U.S.C. 77s(g)(2). FINRA stated that it anticipates that the GASB's annual budget will include an administrative fee to FINRA. The administrative fee is intended to cover FINRA's costs associated with calculating, assessing, and collecting the GASB Accounting Support Fee, and the amount will be negotiated with the FAF each year. For the initial year, the administrative fee will be $50,000.

[8] *See* Securities Exchange Act Release No. 64462 (May 11, 2011), 76 FR 28247 (May 16, 2011).

fee will result in a fair and equitable assessment across FINRA members. FINRA stated, however, that because it is statutorily prohibited from collecting amounts in excess of GASB's recoverable annual budgeted expenses and because a transaction-based fee is inherently variable due to the unpredictability of transaction volume, it proposed a quarterly assessment based on GASB's annual budget.[9] Under proposed Section 14, the GASB Accounting Support Fee would be allocated among FINRA members on a quarterly basis based on municipal securities transactions reported to the MSRB. Specifically, each calendar quarter, each FINRA member would be required to pay an assessment to FINRA of its portion of one quarter of the annual GASB Accounting Support Fee amount that reflects the member's portion of the total par value of municipal securities transactions reported by FINRA members to the MSRB under MSRB Rule G–14(b)[10] in the previous calendar quarter. For example, if GASB's recoverable annual budgeted expenses for a given year were $10 million, FINRA would collect $2.5 million from its members each quarter. Each member's fee would be based on the member's proportion of municipal securities transactions (based on the par value of reported transactions, not their price) reported by all FINRA members to the MSRB in the previous calendar quarter.[11] Thus, for example, if a member reported transactions to the MSRB in a given quarter that accounted for 10% of the total par value amount of transactions reported by all FINRA members during the quarter, the member's assessment would be 10% of one quarter of GASB's annual budget (in the above example, the member's quarterly assessment would be $250,000 (*i.e.,* 10% of $2.5 million)).

To exclude members with de minimis transactions in municipal securities in a given quarter from being assessed the fee, FINRA proposed that members with a quarterly assessment of less than $25 would not be charged the fee for that quarter. Any amounts originally assessed to those members would be reallocated among the members with an assessment that quarter of $25 or more based on each member's portion of the total par value of municipal securities transactions reported by FINRA members to the MSRB.

As required by Section 19(g) of the Securities Act, any GASB Accounting Support Fees collected by FINRA would be remitted to the FAF[12] and used to support the efforts of the GASB to establish standards of financial accounting and reporting applicable to state and local governments.[13] In accordance with Section 19(g)(5)(B) of the Securities Act, collection of the GASB Accounting Support Fee shall not be construed to provide the Commission or FINRA direct or indirect oversight of the budget or technical agenda of the GASB or to affect the setting of generally accepted accounting principles by the GASB.[14]

Because some firms may seek to pass the GASB Accounting Support Fee onto customers engaged in municipal securities transactions, FINRA proposed to publish a Regulatory Notice each year disclosing the total annual GASB Accounting Support Fee that FINRA would collect for that year. In this annual Regulatory Notice, FINRA also anticipates setting out an estimated fee rate (per $1,000 par value) based on the GASB recoverable annual budgeted expenses reported to FINRA for that year and historical municipal security trade reporting volumes so that firms would have some basis on which to establish a fee should they choose to do so. FINRA's Regulatory Notice would also remind any firms choosing to pass along the fee of the need for proper disclosure of the GASB Accounting Support Fee, including, if applicable, the fact that the fee is an estimate and that the firm ultimately may pay more or less than the fee charged to the customer. In addition, any disclosure used by the firm cannot be misleading and must comport with FINRA rules, including just and equitable principles of trade, as well as any applicable MSRB rules.

As proposed, the effective date of the proposed rule change would be the date of Commission approval. The initial fees assessed on members would be based on trading activity reported in the calendar quarter during which the Commission approves the proposed rule change. As a result, the proposed GASB Accounting Support Fee may only cover a portion of the 2012 GASB budget.

III. Comment Letters

As noted above, the Commission received nine comment letters on the proposed rule change.[15] Four commenters generally supported the proposed rule change.[16] Three commenters expressed objections to the proposed rule change and urged the Commission to disapprove it.[17] Five commenters, including three commenters who supported the proposed rule change, expressed concerns regarding various aspects of the proposal.[18] Also, as noted above, FINRA submitted a response letter to the comments.[19]

As noted above, four commenters generally supported the proposed rule change.[20] One commenter stated that it strongly supports the proposal, and that the proposed rule change represents a very positive and long overdue step to provide the GASB, in its role as an independent standards setting body, with reliable funding.[21] While this commenter pointed out several potential concerns with the proposed rule change, the commenter stated that ''any concerns regarding the proposal were outweighed by the positive effects of FINRA's proposal.''[22] This commenter further stated that the proposed rule change is consistent with the Dodd-Frank Act, and will ''provide GASB with a stable funding source for its work,'' ''strengthen GASB's independence,'' ''eliminate the risk that financial support could be lost if an unpopular course of action is pursued by GASB,'' and ''allow GASB to better plan its research work on important topics.''[23]

Another commenter who supported the proposal urged the Commission to approve it, stating that the proposed

[9] Section 19(g)(4) of the Securities Act prohibits FINRA from collecting GASB Accounting Support Fees for a fiscal year in excess of GASB's recoverable annual budgeted expenses. *See* 15 U.S.C. 77s(g)(4).

[10] MSRB Rule G–14(b) sets out municipal securities transaction reporting requirements.

[11] If a member does not engage in reportable municipal securities transactions during a particular calendar quarter, the member would not be subject to the GASB Accounting Support Fee for that quarter.

[12] *See* 15 U.S.C. 77s(g)(1).

[13] *See* 15 U.S.C. 77s(g)(3). Specifically, FINRA stated that it anticipates establishing a separate bank account specifically for the GASB Accounting Support Fee and would coordinate with the FAF to establish a process by which FINRA would wire the funds into the FAF account for the GASB Accounting Support Fee. Further, given the separate bank account, FINRA would provide monthly account reconciliations and accounts receivable aging reports, which would be reviewed by FINRA management each month and would be available for review by FAF and GASB management upon request.

[14] *See* 15 U.S.C. 77s(g)(5)(B).

[15] *See supra* note 4.

[16] *See* AGA Letter; NASBO Letter; NASACT Letter; and Massachusetts Letter.

[17] *See* SIFMA Letter; BDA Letter; and Melton Letter.

[18] *See* FSI Letter; AGA Letter; Associations Letter; NASBO Letter; and NASACT Letter.

[19] *See supra* note 5. Prior to filing this proposed rule change, FINRA issued Regulatory Notice 11–28 requesting comment on the proposal. *See* FINRA Regulatory Notice 11–28 (June 2011). In the Notice, FINRA addressed the comments it received in response to the Regulatory Notice.

[20] *See supra* note 16.

[21] *See* AGA Letter at 1.

[22] *Id.* at 2.

[23] *Id.*

rule change ''represents the best compromise identified through a deliberative open process and represents a long-term solution to GASB funding needs.'' [24] Another commenter stated that ''allocating the support fee among FINRA member firms based on municipal securities transactions appears to be a reasonable way to provide GASB with a steady source of independent funding'' and that ''[t]he methodology seems fair and equitable.'' [25] The final commenter that generally supported the proposal stated that it agreed with most of the proposed changes, but was concerned the proposal did not specifically state that the GASB Accounting Support Fee could not be passed on to issuers of municipal debt.[26]

Several commenters who opposed the proposed rule change expressed the belief that the proposed GASB Accounting Support Fee is not equitable because it is imposed only on broker-dealers.[27] One commenter stated that charges to the broker-dealer community should be restricted ''to those items that are directly connected to broker-dealers,'' and that ''the connection to the broker-dealer community in this case is tenuous.'' [28] One commenter stated that GASB's activities benefit many participants in the municipal market other than broker-dealers, so the fee should be shared broadly by those who benefit.[29] Another commenter stated that the proposed rule change is an ''unfair tax'' on broker-dealers.[30] This commenter stated that the true beneficiaries of GASB's work are state and local governments, investors, rating agencies, and auditors, and they should directly fund GASB's operations.[31] Further, this commenter stated that, under the proposed rule, many diverse end users of GASB's accounting and financial reporting standards would get a ''free ride.'' [32] In addition, this commenter stated that numerous state and local governments and other municipal bond obligors do not follow GASB standards, so there is ''no reasonable basis, nexus, or justification for the bondholders of these entities (or even the entities themselves) to financially support the activities of GASB,'' and that ''[i]f dealers are required to fund GASB, they should enjoy some certainty that GASB's work product will be adhered to.'' [33] This commenter also stated that bank dealers are not subject to FINRA regulation, so they would not be covered under the proposed rule change.[34] Further, this commenter stated that each broker-dealer counterparty to a trade reports the trade under MSRB Rule G–14(b), resulting in a multiple assessment for a single purchase and sale.[35] Lastly, this commenter suggested structuring the fee as an underwriting assessment on all municipal securities (or potentially just on bonds with GASB reporting obligors) purchased by a dealer from an issuer as part of a primary offering.[36]

One of the commenters who supported the proposed rule change also noted that there could be a potential ''unintended negative effect from assessing GASB's costs across only a portion of the stakeholders that benefit from GASB's work,'' and that relying on a single constituency could have an unintended negative consequence.[37] This commenter also stated, however, that it believes that the proposed rule change could create a ''healthy segregation'' for organizations that currently both collect sums from states and local governments for the funding of GASB and also participate heavily in commenting on the policy decisions developed by the GASB, by eliminating any potential conflicts between these two interests.[38]

In response to comments regarding who should be required to pay the GASB Accounting Support Fee, FINRA reaffirmed its statements in the Notice that Section 19(g) of the Securities Act substantially limited the parameters of the GASB Accounting Support Fee and that FINRA has no authority to collect the fee from non-FINRA members.[39] In the Notice, FINRA also stated that because the goal of the assessment is to equitably allocate the GASB Accounting Support Fee among participants in the municipal securities market, it is appropriate that both brokers in a broker-to-broker transaction be considered as participating in that market with respect to the transaction, rather than using only one side of the trade in calculating the fee.[40] FINRA further stated its belief that the proposed fee would accurately reflect firms' participation in the municipal securities markets, whether those firms act as underwriters, brokers' brokers, or simply as buyers or sellers of municipal securities.[41] Lastly, in the Notice, FINRA declined to distinguish between issues depending on whether the obligor has followed Financial Accounting Standards Board (''FASB'') standards, GASB standards, or neither.[42] FINRA stated that this information is not required to be reported to the MSRB, is not available on an automated basis, and that it would be impractical for FINRA to attempt to maintain a comprehensive and accurate list of issues where the obligor has followed GASB standards.[43] In its response letter, FINRA also stated its belief that the issue of who should pay the GASB Accounting Support Fee is more properly resolved by the Commission, and that unless the Commission rescinds its order, FINRA must proceed with the rulemaking pursuant to Section 19(g) and the Commission's order.[44]

Several commenters representative of state and local officials stated that the proposed rule change would allow FINRA members to pass the GASB Accounting Support Fee on to the members' customers, which would be inconsistent with the Dodd-Frank Act.[45] One commenter who stated that the proposed fee is a reasonable way to provide GASB with a steady source of independent funding and that the methodology is fair and equitable expressed concern that the fee could be passed along to customers, particularly municipal issuers.[46] This commenter stated that the Dodd-Frank Act specifically provides that the fee is to be paid by members of a national securities

[24] Massachusetts Letter.

[25] NASACT Letter.

[26] *See* NASBO Letter at 1.

[27] *See* Melton Letter; BDA Letter; and SIFMA Letter.

[28] Melton Letter (stating that ''[r]egistered broker-dealers are neither governmental entities nor accountants'').

[29] *See* BDA Letter at 1 (stating that activities of GASB benefit issuers, financial advisors, investors, and citizens).

[30] *See* SIFMA Letter at 3.

[31] *See id.* at 3–4.

[32] *See id.* at 4.

[33] *Id.*

[34] *See id.* at 6.

[35] *See id.*

[36] *See id.* at 7.

[37] *See* AGA Letter at 1–2. The commenter also pointed out that state and local governments vary as to how often and to what extent they enter the municipal securities market, but stated that, even considering the current GASB funding mechanism, it is unaware of any link between a state or local government's decision to allocate funds to support GASB and its subsequent decision to follow GASB standards. *See id.*

[38] *See id.* at 2.

[39] *See* FINRA Response Letter at 3 and Notice, 77 FR at 1122.

[40] *See* Notice, 77 FR at 1123.

[41] *See id.* FINRA also noted that basing the GASB Accounting Support Fee on underwriting, rather than transactions, would increase the burden on lead underwriters and would disproportionately affect market participants engaged in underwriting activities rather than in trading in the secondary market. Further, FINRA stated that basing the fee on underwriting would wholly exempt secondary market participants from paying the fee and the fee would be assessed only on future municipal issues and would ''grandfather'' in previous issues. *See id.* at note 42.

[42] *See id.* at 1123.

[43] *See id.*

[44] *See* FINRA Response Letter at 5.

[45] *See* Associations Letter; NASBO Letter; and NASACT Letter.

[46] *See* NASACT Letter.

association.[47] Another commenter stated that ''[t]he proposed rule does not adhere to the statutory language because it does not specify that the Fee must be paid by the members of the association, and in fact leaves open the possibility that the Fee may be passed along to customers, which might include state and local governments who issue municipal securities.'' [48] This commenter also stated that, without language that would prevent FINRA members from passing the fee to issuers of municipal securities, ''there will be nothing to ensure that the law is correctly implemented, and that state and local governments—and ultimately tax payers—will not be unnecessarily burdened with additional fees.'' [49] One more commenter expressed concern that the proposed rule change is inconsistent with the statutory language of the Dodd-Frank Act ''because it does not specify that the fee be paid by the members of the association, and leaves open the possibility that the fee may be passed along to customers which includes state and local governments who issue municipal securities.'' [50]

On the other hand, commenters representing broker-dealers stated that the proposal should allow broker-dealers to pass on the GASB Accounting Support Fee to customers engaged in municipal securities transactions.[51] One commenter stated that dealers should be allowed to pass the fee to municipal issuers instead of or in addition to investors, and that this would more closely follow how FASB is funded.[52] Another commenter suggested that broker-dealers should be allowed to share the burden of the fee and pass through the fee.[53]

In response to comments regarding whether FINRA members could pass through the GASB Accounting Support Fee, FINRA reaffirmed its views as expressed in the Notice,[54] and responded that Section 19(g) of the Securities Act ''does not, in fact, require that the fee be 'paid' by FINRA members, much less 'specifically state' such a requirement.'' [55] FINRA stated that the proposed rule change ''does precisely what the statute and the SEC GASB Order require: It proposes a rule to allocate, assess, and collect the GASB Accounting Support Fee from FINRA members, and only from FINRA members.'' [56] FINRA further stated that the manner by which its members choose to recoup the expenditure is not addressed by Section 19(g) of the Securities Act, the Commission's order, or FINRA's proposed rule.[57]

Two commenters expressed concerns with respect to the proposed de minimis exemption for FINRA members whose GASB Accounting Support Fee assessment is less than $25 per quarter.[58] One commenter urged FINRA to increase the threshold for the exemption to $250 because ''it would provide relief to a greater number of member firms with de minimis involvement in municipal trading'' and ''would appropriately place the burden of supporting the annual budget of the GASB primarily on those firms that are substantially involved in municipal trading.'' [59] In the alternative, this commenter urged FINRA to ''provide clarification as to why alternative threshold levels between $25 and $1000 were not considered or discussed in the Proposed Rule.'' [60] Another commenter stated that the exemption threshold should be increased to $1000 because of the concentration of trading and because of problems passing through the fee.[61] This commenter stated that there are problems with passing the fee through because a firm would not know its liability until after the close of the quarter and, therefore, it cannot determine the amount allocable to a given trade at the time of the trade.[62] As such, any attempt to pass on the fee would ''necessarily be an estimate, and one that would surely be either too much or too little.'' [63] Because ''[s]etting up a system to track these charges would disproportionately burden smaller firms, as would the alternative of the broker-dealer accepting the entire burden of the GASB fee,'' the commenter requested that the exemption threshold be increased to $1000.[64] This commenter also stated that a threshold of $1000 would capture ''90 percent of the par volume,'' and that ''[b]ecause of the concentration of trading, we believe the focus should not be on the number of dealers included or excluded, but on the proportion of the par value of the market included or excluded.'' [65]

In response to comments regarding the threshold for the de minimis exemption, FINRA stated that it considered other dollar levels before proposing the $25 threshold.[66] In the FINRA Response Letter, FINRA reaffirmed its statements in the Notice, and stressed that any amount that one member is not assessed because of the de minimis exemption must be assessed to another member, so it believes that the threshold should be relatively low to avoid the cumulative effect that the exemption would have on those members above the threshold in a given quarter.[67] Further, FINRA stated that any concern about proportionality is addressed in the fee assessment itself because firms with a higher proportional volume of reported sales will pay more than members with a smaller volume, and that the exemption was intended to exempt members with truly de minimis trading activity in a given quarter.[68]

Several commenters expressed concern that there would be no oversight of the amount of GASB Accounting Support Fees to be collected, and that the Commission and FINRA do not have the authority to oversee the amount of the fees or the uses of the fees.[69] One commenter stated that ''[s]eparating the authority to spend the money from the responsibility for collecting it—and accountability to those who pay it—is extremely bad

[47] *See id.*

[48] Associations Letter at 1.

[49] *Id.* at 2.

[50] NASBO Letter at 1–2.

[51] *See* SIFMA Letter and BDA Letter.

[52] *See* SIFMA Letter at 6. This commenter further stated that the proposed fee unfairly burdens certain dealers because many transactions reported to the MSRB pursuant to Rule G–14(b) do not involve customers, which means some dealers cannot pass through the fee to customers. *See id.* at 5.

[53] *See* BDA Letter at 2.

[54] *See* Notice, 77 FR at 1124. FINRA stated that it ''has long recognized that members pass fees through to the customers whose transactions generate those fees, and FINRA rules generally do not address the commercial allocation of fees between members and their customers, provided such fees are fair, reasonable, and disclosed.'' *Id.* FINRA also declined to give a blanket exemption for issuers of municipal securities, and noted that transactions from a municipal securities issuer to an underwriter are not reported to the MSRB and would not generally be counted toward a member's quarterly assessment. *See id.*

[55] FINRA Response Letter at 4.

[56] *Id.*

[57] *See id.* at note 16. FINRA also stated that it has no rule dictating how its member firms cover expenditures, and does not believe that any such provision is required by Section 19(g) or the Commission's order. *See id.*

[58] *See* FSI Letter and BDA Letter.

[59] FSI Letter at 3.

[60] *Id.*

[61] *See* BDA Letter at 2.

[62] *See id.*

[63] *Id.*

[64] *Id.*

[65] *Id.*

[66] *See* FINRA Response Letter at 6. In the Notice, FINRA stated that a de minimis threshold of $25 per quarter would exempt approximately 55% of the firms per quarter, and raising the threshold to $1000 would exempt approximately 90% of the firms. *See* Notice, 77 FR at 1124.

[67] *See* FINRA Response Letter at 5. *See also* Notice, 77 FR at 1124. FINRA further stressed that it estimates that a $25 threshold would exempt over half of its members reporting trades to the MSRB in a given quarter. *See* FINRA Response Letter at 6.

[68] *See* FINRA Response Letter at 6.

[69] *See* BDA Letter; SIFMA Letter; and AGA Letter.

public policy.'' [70] Another commenter pointed out that neither the proposed rule change nor the Commission's order directing funding for GASB contains a provision for independent direct or indirect oversight of GASB's budget, and that this is inconsistent with the Commission's oversight and review of FASB's annual budget.[71] This commenter requested that some independent oversight be implemented to encourage transparency and fiscal discipline.[72]

Another commenter noted that it initially had been concerned that there appeared to be no constraints on GASB's budget and/or limit on costs.[73] However, during its discussion with a FAF Board member, the commenter was informed that there are control mechanisms in place, including reviews by the Finance Committee of the FAF, and the commenter stated that it trusts that these mechanisms will remain in place and continue as a meaningful review and restraint on GASB's budget and costs.[74]

In response to comments regarding oversight of the amounts and uses of the GASB Accounting Support Fee, FINRA reaffirmed its statements in the Notice that Section 19(g)(5)(B)(i) of the Securities Act provides that the collection of the GASB Accounting Support Fee does not provide FINRA with any direct or indirect oversight of the budget or technical agenda of the GASB.[75] In its response letter, FINRA stated that the issue is more properly resolved by the Commission, and that unless the Commission rescinds its order, FINRA must proceed with the rulemaking pursuant to Section 19(g) and the Commission's order.[76]

Lastly, one commenter stated that the proposed $50,000 fee for FINRA to administer the GASB Accounting Support Fee is unwarranted because FINRA could easily amend its process for collecting its Trading Activity Fee (''TAF'') to include the GASB Accounting Support Fee.[77] Alternatively, this commenter suggested that if FINRA moves forward with a fee based on an underwriting assessment or trades submitted to the MSRB, the MSRB could administer the fee for minimal costs because it already has the staffing and information to calculate, assess, and collect underwriting assessments, as well as transaction and technology assessments pursuant to MSRB Rule A–13.[78]

While FINRA did not provide any additional response to the comment regarding the administrative fee in its response letter, FINRA stated in the Notice that it disagrees that the fee is unwarranted.[79] In the Notice, FINRA stated that use of a self-reporting model like the TAF is inappropriate for the GASB Accounting Support Fee because the transaction information available through the MSRB would be a more timely and reliable source of transaction information than self-reported data.[80] FINRA also stated that self-reporting could increase costs for firms and FINRA [81] and that the exceptions from the TAF should not apply to the assessment of the GASB Accounting Support Fee.[82] Further, in the Notice, FINRA stated that the amount of the administrative fee was negotiated with the FAF and based on estimated costs to FINRA, and that it anticipates that the administrative fee will be reviewed and evaluated each year by FINRA and FAF in light of FINRA's experience in assessing and collecting the GASB Accounting Support Fee and the actual costs incurred by FINRA.[83]

IV. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with Section 19(g) of the Securities Act [84] and the Commission order directing funding for the GASB,[85] as well as Section 15A(b)(5) of the Exchange Act.[86] Specifically, the Commission finds that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among FINRA members. Further, the Commission finds that proposed Section 14 to Schedule A of the FINRA By-Laws establishes a reasonable annual accounting support fee to adequately fund the annual budget of the GASB, as well as rules and procedures that provide for the equitable allocation, assessment, and collection of the accounting support fee from FINRA members, and the remittance of all such accounting support fees to the FAF.[87]

The Commission finds that the proposed GASB Accounting Support Fee is reasonable because it is based on the annual GASB budget, which is reviewed and approved according to the internal procedures of the FAF.[88] In addition, pursuant to Section 19(g)(4) of the Securities Act, the GASB Accounting Support Fee collected for a fiscal year may not exceed the recoverable annual budgeted expenses of the GASB.[89] The Commission finds that the proposed GASB Accounting Support Fee is equitable because the fee will be proportionally distributed among FINRA members based on a member's portion of the total par value of municipal securities transactions reported by FINRA members to the MSRB under MSRB Rule G–14(b) in the previous calendar quarter.[90] As such, FINRA members who are active participants in the municipal securities markets will be assessed a proportionately higher fee than those who are less active. The Commission also believes that the transaction information reported to the MSRB will serve as an objective, timely, and reliable source of transaction information. Further, the Commission believes that the de minimis exemption for FINRA members whose assessment is less than $25 in a quarter is consistent with the equitable allocation of the fee because it will exempt firms who engage in a truly de minimis amount of transactions in municipal securities, and will not impose an undue burden on other firms that will receive allocations of this exempted fee.[91] The

[70] BDA Letter at 2.

[71] *See* SIFMA Letter at 5.

[72] *See id.*

[73] *See* AGA Letter at 2.

[74] *See id.*

[75] *See* Notice, 77 FR at 1122.

[76] *See* FINRA Response Letter at 5.

[77] *See* SIFMA Letter at 6.

[78] *See id.*

[79] *See* Notice, 77 FR at 1122.

[80] *See id.* at 1122–23.

[81] *See id.* at 1123. FINRA stated that under a self-reporting model, FINRA would need to audit its members to ensure that their self-reporting was accurate and timely, and that Section 19(g) requires FINRA to collect exact amounts, thus creating an inability to remedy potential over- or under-payments by members that self-report erroneous data. *See id.*

[82] *See id.* For example, FINRA noted that the TAF is currently only charged to the sell side of a transaction. *See id.*

[83] *See id.*

[84] 15 U.S.C. 77s(g).

[85] *See supra* note 8.

[86] 15 U.S.C. 78*o*–3(b)(5).

[87] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[88] *See* 15 U.S.C. 77s(g)(2).

[89] *See* 15 U.S.C. 77s(g)(4).

[90] The Commission believes that allocating the GASB Accounting Support Fee to each counterparty to a trade is consistent with the equitable allocation of the fee because each FINRA member is assessed a fee based on the level of its activities in the municipal securities markets. The Commission further believes that it is equitable to allocate the fee to reflect a member's participation in the municipal securities market, regardless of whether the member acts as an underwriter, broker's broker, or a buyer or seller of municipal securities. In addition, the Commission believes that it is equitable to not make a distinction, in allocating the fee, depending on whether the obligor has followed GASB standards.

[91] The Commission notes that FINRA stated that it had considered other dollar levels before proposing the $25 threshold. *See supra* note 66 and accompanying text.

Commission notes that FINRA members that do not fall within the de minimis exemption will be equitably allocated a portion of the fee based on an objective measure of their participation in the municipal securities market.[92]

With respect to the comments that the proposed GASB Accounting Support Fee is inequitable because it is only imposed on broker-dealers, but not others who may benefit from GASB's activities, the Commission notes that Section 19(g) of the Securities Act provides that the Commission may require a registered national securities association to establish rules and procedures to provide for the equitable allocation, assessment, and collection of the GASB Accounting Support Fee from its members.[93] As such, consistent with the statutory language, FINRA may only impose the GASB Accounting Support Fee on its members, even though other entities may benefit from GASB's activities.

Further, in connection with the comments regarding whether FINRA members should be allowed to pass through the GASB Accounting Support Fee, the Commission notes that how FINRA members recoup their expenditures is not the subject of Section 19(g) of the Securities Act or FINRA's proposed rule change.[94] Consistent with Section 19(g)(1) of the Securities Act,[95] the GASB Accounting Support Fee will be allocated and assessed to, and collected from, FINRA members.[96]

With respect to the concerns that there would be no oversight of the amount of the GASB Accounting Support Fee to be collected and the use of the money, the Commission notes that Section 19(g)(5)(B)(i) of the Securities Act specifically states that Section 19 does not provide the Commission or any national securities association with direct or indirect oversight of the budget or technical agenda of the GASB.[97]

With respect to comments regarding the $50,000 fee for FINRA to administer the GASB Accounting Support Fee, the Commission notes that according to FINRA, the fee was negotiated with FAF and is based on estimated costs to FINRA. Further, FINRA stated that this fee may increase or decrease, if necessary, based on yearly reviews in light of FINRA's experience in assessing and collecting the GASB Accounting Support Fee and the actual costs incurred by FINRA. As such, the Commission believes that the $50,000 administrative fee is not unreasonable.[98]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[99] that the proposed rule change (SR–FINRA–2011–073) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[100]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4767 Filed 2–28–12; 8:45 am]

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[92] With respect to the concern that any attempt to pass through the fee would be based on estimates, and that setting up a system to track charges to customers would disproportionately burden small firms, the Commission notes that the proposed rule change does not require FINRA members to pass the fee through to their customers.

[93] *See* 15 U.S.C. 77s(g). Further, as discussed above, one commenter pointed out that, by allocating the GASB Accounting Support Fee among FINRA members, the proposed rule change could eliminate conflicts of interest for entities that collect sums from state and local governments for the funding of GASB, but that also participate in commenting on the policy decisions developed by GASB.

[94] With respect to the comment that the proposed rule change is inconsistent with how FASB is funded, the Commission notes that the allocation, assessment, and collection of the GASB Accounting Support Fee, unlike the FASB fee, is governed by Section 19(g) of the Securities Act.

[95] *See* 15 U.S.C. 77s(g)(1).

[96] The Commission notes that FINRA has proposed to publish a Regulatory Notice each year disclosing the total annual GASB Accounting Support Fee that it would collect for that year and an estimated fee rate, and that the Regulatory Notice would remind any firms choosing to pass through the fee of the need for proper disclosure of the GASB Accounting Support Fee, including, if applicable, the fact that the fee is an estimate and that the firm ultimately may pay more or less than the fee charged to the customer. In addition, FINRA has stated that any disclosure used by the firm cannot be misleading and must comport with FINRA rules, including just and equitable principles of trade, as well as any applicable MSRB rules.

[97] *See* 15 U.S.C. 77s(g)(5)(B)(i).

[98] Based on FINRA's response to comments in the Notice and the response letter, the Commission believes that it is reasonable for FINRA to not amend its process for collecting its TAF to include the GASB Accounting Support Fee.

[99] 15 U.S.C. 78s(b)(2).

[100] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66453; File No. SR–NYSEAMEX–2012–11]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Registration Requirements for Traders

February 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 February 9, 2012, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization (''SRO''). The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its registration requirements for traders. 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 its registration requirements for traders.[5]

Background

NYSE Amex Options Rule 341(a) currently provides that no member or member organization shall permit any natural person to perform regularly any

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange's affiliate, NYSE Arca, Inc., has submitted a substantially similar rule filing. *See* SR–NYSEAMEX–2012–11.

of the duties normally performed by a (i) Registered representative, (ii) securities lending representative, (iii) securities trader or (iv) direct supervisor of any such individual unless such person has been registered with, qualified by and approved by the Exchange. Commentary .01 to NYSE Amex Options Rule 341 defines ''securities trader'' as any person engaged in the purchase or sale of securities or other similar instruments for the account of a member or member organization with which he is associated, as an employee or otherwise, and who does not transact any business with the public. A securities trader must pass the Series 7 examination and is registered as a General Securities Representative.[6]

Proposal

As part of the proposed rule change, the Exchange proposes to delete the word ''regularly'' from NYSE Amex Options Rule 341(a). The Exchange is making this threshold change to the registration requirement in the rule because it believes that registration is required whenever the activities set forth in the rule are performed, even if it would be on an irregular basis.

In addition, the Exchange proposes to create a new, alternative limited registration category for Proprietary Traders that would be reflected in NYSE Amex Options Rule 341(a) and Commentary .01 to that Rule. The Exchange has been working with other SROs, some of which have recently enhanced their registration requirements for associated persons,[7] to develop the content outline and the qualification examination, the Series 56, which would be applicable to Proprietary Traders. Certain exchanges have submitted filings to the Commission to utilize the Series 56.[8] The Exchange expects to describe the Series 56 in detail and submit the content outline for it to the Commission in a separate filing, as well as make the examination and alternative registration category available in Web CRD.[9] Accordingly, the Exchange is amending its rules to recognize the Proprietary Trader registration category and the Series 56.

Under the proposed rule change, the Exchange would rename the category ''securities trader'' as ''Proprietary Trader.'' A Proprietary Trader would be required to be registered as such on Web CRD and pass the Series 56 examination described above, but would not be permitted to function in an agency capacity or otherwise conduct a public business in securities.[10]

The Exchange believes that the alternative limited registration category and qualification examination are appropriate because they are tailored to proprietary trading functions. Presently, persons engaged in proprietary trading on the Exchange are required to pass the Series 7, which the Exchange believes covers a great deal of material that is not relevant to proprietary trading functions. Instead, the Series 56 covers both equities and options trading rules, but not all of the rules that are applicable to firms and persons conducting a public business.

Securities traders currently associated with member organizations have previously passed the Series 7. The proposed rule change would not require those individuals currently acting as securities traders who have already passed the Series 7 to register under the new category as Proprietary Traders or to pass the Series 56 because the Exchange believes this would be redundant. Persons who have passed the Series 7 may, of course, engage in proprietary trading because the new Proprietary Trader registration category is a limited registration category. Thus, the proposal would not preclude associated persons from registering as General Securities Representatives and passing the Series 7 examination and then engaging in proprietary trading.

The Exchange expects that individuals might consider the category once it and the Series 56 examination become available for use by NYSE Amex on Web CRD. Accordingly, the Exchange believes that the category should be helpful to registering those individuals conducting a business in proprietary trading, while at the same time preserving the important goals of appropriate registration and qualification for persons in the securities business. Additionally, member organizations that hire new associated persons might choose to register them in the category.

The proposed rule change is not intended to replace the Series 7 requirement for all traders, but simply to offer an alternative to that requirement on a going-forward basis for those qualified individuals who solely conduct a business in proprietary trading and have shown their proficiency by successfully passing the Series 56.

The Exchange also proposes technical and conforming changes to NYSE Amex Options Rules 6, 8, 340 (and Commentary .03 thereto), and 341B to substitute ''Proprietary Trader'' for ''securities trader.''

Finally, the Exchange notes that Proprietary Traders would be subject to the continuing education requirements of NYSE Amex Options Rule 341A.[11]

Compliance Date

Following effectiveness of the proposed rule change, the Exchange will issue a Regulatory Bulletin announcing the compliance date within 30 days from the operative date of the rule change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (''Act'')[12] in general, and furthers the objectives of (1) Section 6(c)(3)(B) of the Act,[13] pursuant to which a national securities exchange prescribes standards of training, experience and competence for members and their associated persons; and (2) Section 6(b)(5) of the Act,[14] in that it is designed, among other things, 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 protect investors and the public interest. The Exchange believes that adopting new registration requirements for associated persons of member organizations who are acting in the capacity of a trader and by offering an alternative limited registration category for Proprietary Traders should help ensure that all associated persons engaged in a securities business are, and will

[6] Market Makers and Market Maker Authorized Trader [sic] are subject to separate registration requirements that are found in NYSE Rules 921NY and 921.1NY.

[7] *See* Securities Exchange Act Release Nos. 63843 (Feb. 4, 2011), 76 FR 7884 (Feb. 11, 2011) (SR–ISE–2010–115); and 63314 (Nov. 12, 2010), 75 FR 70957 (Nov. 19, 2010) (SR–CBOE–2010–084).

[8] *See e.g.,* Securities Exchange Act Release No. 64699 (June 17, 2011) 76 FR 36945 (June 23, 2011) (SR–CBOE–2011–056).

[9] Web CRD is the central licensing and registration system for the U.S. securities industry and its regulators.

[10] The Exchange proposes to add language to the definition of ''Proprietary Trader'' to specify that the definition does not include individuals required to be registered as Market Makers or Market Maker Authorized Traders. *See supra* note 6.

[11] Under Commentary .01 of that Rule, registered persons whose activities are limited solely to the transaction of business on the Floor with members or registered broker-dealers are not subject to continuing education requirements. The Exchange intends to submit a separate filing in the future to apply continuing education requirements to such persons so that all registered persons would be subject to continuing education.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(c)(3)(B).

[14] 15 U.S.C. 78f(b)(5).

continue to be, properly registered, trained and qualified to perform their functions.

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

Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

The Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay. Waiver of the 30-day operative delay will help ensure registration of all associated persons of member firms performing certain duties on the Exchange, even if certain activities performed on the Exchange are not done by such persons on a regular basis. In addition, waiver of the operative delay will enable associated persons of Exchange firms to avail themselves of the limited Proprietary Trader registration category, and qualify by taking the Series 56, as soon as it becomes available. Finally, the technical changes will add clarity to NYSE Amex's rules. For these reasons, the Commission hereby waives the 30-day operative delay.[17]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–NYSEAMEX–2012–11 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–NYSEAMEX–2012–11. 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 Section, 100 F Street NE., Washington, DC 20549 on official business days between 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* 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–NYSEAMEX–2012–11 and should be submitted on or before March 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. 2012–4766 Filed 2–28–12; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66452; File No. SR–NYSEARCA–2012–15]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Registration Requirements for Traders and Removing Obsolete References to Paper Registration Submissions

February 23, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 9, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its registration requirements for traders and

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(6).

remove references to paper registration submissions that are no longer used. 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 its registration requirements for traders and remove references to paper registration submissions that are no longer used.[6] Specifically, NYSE Arca proposes to amend its rules in order to (1) relocate and revise the registration requirements for traders currently found in NYSE Arca Options Rule 2.5(b)(10)(A), (2) remove a provision that limits those registration requirements to traders of member organizations for which the Exchange is the Designated Examining Authority (''DEA''), (3) adopt an alternative Proprietary Trader registration category for those individuals who are associated with OTP Holders and OTP Firms [7] and who solely conduct a business in proprietary trading, (4) remove references in NYSE Arca Options Rule 2.23 to paper registration submissions that are no longer used, and (5) make certain technical and conforming changes.

Registration of Traders

NYSE Arca Options Rule 2.5 generally concerns the denial of or conditions to trading privileges under an Options Trading Permit. NYSE Arca Options Rule 2.5(b)(10)(A) requires that all traders of member organizations for which the Exchange is the DEA must successfully complete the General Securities Registered Representative Examination (''Series 7'') unless an exemption applies. The Exchange proposes to move the text of NYSE Arca Options Rule 2.5(b)(10)(A) to NYSE Arca Options Rule 2.23, which concerns the registration of employees of OTP Firms, and which the Exchange believes is a more logical location for the rule text.

NYSE Arca also proposes to amend that rule text by removing the provision that limits examination requirements to traders of member organizations for which the Exchange is the DEA and to make a conforming change by deleting current NYSE Arca Options Rule 2.23(b)(i) and (ii). Under proposed NYSE Arca Options Rule 2.23(b), all traders associated with OTP Holders and OTP Firms, registered with the Exchange will now be required to pass an applicable examination. This expanded examination requirement should help ensure that all registered traders on NYSE Arca, will continue to be, properly registered, trained and qualified to perform their functions.

A requirement that all traders of member organizations register and be subject to an applicable examination, not just those for which an exchange is the DEA, would be consistent with the registration requirements of other self-regulatory organizations (''SROs''), including The Chicago Board Options Exchange (''CBOE'') and NYSE Amex.[8]

Proprietary Trader Registration

NYSE Arca Options Rule 2.5(b)(10)(A) currently provides that certain traders are exempted from the requirement to successfully complete the Series 7, namely (i) An individual registered as a Market Maker or Market Maker Authorized Trader, (ii) an individual registered as a Floor Broker, and (iii) an individual registered with the Exchange as a Floor Clerk. The Exchange proposes to move the first two exemptions to proposed NYSE Arca Options Rule 2.23(b)(2) and add an exemption for Proprietary Traders.[9]

NYSE Arca has been working with other SROs, some of which have recently enhanced their registration requirements for associated persons,[10] to develop the content outline and the qualification examination, the Series 56, which would be applicable to Proprietary Traders. Certain exchanges have submitted filings to the Commission to utilize the Series 56.[11] NYSE Arca expects to describe the Series 56 in detail and submit the content outline for it to the Commission in a separate filing, as well as make the examination and alternative registration category available in Web CRD.[12] Accordingly, NYSE Arca is amending its rules to recognize the Proprietary Trader registration category and the Series 56.

Under proposed NYSE Arca Options Rule 2.23(b)(2), the Exchange would recognize a Proprietary Trader registration category for an individual engaged in the purchase or sale of securities or other similar instruments for the account of a member or member organization with which he or she is associated, as an employee or otherwise, and who does not transact any business with the public.[13] A Proprietary Trader would be required to be registered as such on Web CRD and pass the Series 56 examination described above, but would not be permitted to function in an agency capacity or otherwise conduct a public business in securities.

NYSE Arca believes that the alternative limited registration category and the qualification examination are appropriate because they are tailored to proprietary trading functions. Presently, persons engaged in proprietary trading on NYSE Arca at a firm for which the Exchange is the DEA are required to pass the Series 7, unless an exception applies. The Exchange believes that the Series 7 covers a great deal of material that is not relevant to proprietary trading functions. Instead, the Series 56 covers both equities and options trading rules, but not all of the rules that are applicable to firms and persons conducting a public business.

Many persons associated with OTP Holders and OTP Firms have previously passed the Series 7. The proposed rule change would not require those individuals currently engaged in proprietary trading who have already

[6] The Exchange's affiliate, NYSE Amex LLC (''NYSE Amex''), has submitted a substantially similar rule filing concerning trader registration requirements. *See* SR–NYSEAmex–2012–11.

[7] Pursuant to NYSE Arca Options Rule 1.1(q)–(r), OTP Holders and OTP Firms have status as ''members'' of the Exchange as that term is defined in Section 3 of the Securities Exchange Act of 1934, as amended (the ''Act'').

[8] *See* CBOE Rule 3.6A Commentary .06 and NYSE Amex Rule 341(a).

[9] The Exchange is not moving the reference to Floor Clerks [sic] because they are not traders. Floor Clerks are subject to registration on Web CRD but not subject to an examination requirement.

[10] *See* Securities Exchange Act Release Nos. 63843 (Feb. 4, 2011), 76 FR 7884 (Feb. 11, 2011) (SR–ISE–2010–115), and 63314 (Nov. 12, 2010), 75 FR 70957 (Nov. 19, 2010) (SR–CBOE–2010–084).

[11] *See e.g.,* Securities Exchange Act Release Nos. 64699 (June 17, 2011), 76 FR 36945 (June 23, 2011) (SR–CBOE–2011–056), and 65054 (August 8, 2011), 76 FR 50277 (August 12, 2011) (SR–ISE–2011–36).

[12] Web CRD is the central licensing and registration system for the U.S. securities industry and its regulators.

[13] This is the same definition that NYSE Amex currently uses for securities traders, and would not cover individuals who are required to register as Market Makers or Market Maker Authorized Traders. *See* Commentary .01 to NYSE Amex Options Rule 341. NYSE Amex is proposing to redefine this category as ''Proprietary Trader'' and recognize the Series 56 along with other exchanges. *See supra* note 6.

passed the Series 7 to register under the new category as Proprietary Traders or to pass the Series 56 because the Exchange believes this would be redundant. Persons who have passed the Series 7 may, of course, engage in proprietary trading because the new Proprietary Trader registration category is a limited registration category. Thus, the proposal would not preclude associated persons from registering as General Securities Representatives and passing the Series 7 examination and then engaging in proprietary trading.

NYSE Arca expects that individuals might consider the category when applying as an OTP Holder or OTP Firm once the category and examination become available for use by NYSE Arca on Web CRD. Accordingly, the Exchange believes that the category should be helpful to registering those individuals conducting a business in proprietary trading, while at the same time preserving the important goals of appropriate registration and qualification for persons in the securities business. Additionally, OTP Holders and OTP Firms who hire new associated persons might choose to register them in the category.

The proposed rule change is not intended to replace the Series 7 requirement for all traders, but simply to offer an alternative to that requirement for those qualified individuals who solely conduct a business in proprietary trading and have shown their proficiency by successfully passing the Series 56.

Paper Registration Submissions

NYSE Arca Options Rule 2.23(a) states that for registration categories (e.g. Floor Clerk) not available electronically on CRD, individuals must file directly with the Exchange a Form U4, any required amendments, or registration documentation prescribed by the Exchange. Because all NYSE Arca registration categories are now available electronically on CRD, the Exchange proposes to delete this text.

Technical and Conforming Changes

The Exchange proposes non-substantive technical changes, for example, to delete the word ''Test'' as it is redundant and to reformat some of the rule text simply for stylistic purposes. The Exchange also proposes a conforming change to Commentary .01 of NYSE Arca Options Rule 2.23 to correct a cross-reference to rule text that is being moved from NYSE Arca Options Rule 2.5(b)(10)(A).[14]

Compliance Date

Following effectiveness of the proposed rule change, the Exchange will issue a Regulatory Bulletin announcing the compliance date within 30 days from the operative date of the rule change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [15] in general, and furthers the objectives of (1) Section 6(c)(3)(B) of the Act,[16] pursuant to which a national securities exchange prescribes standards of training, experience and competence for members and their associated persons, and (2) Section 6(b)(5) of the Act,[17] in that it is designed, among other things, 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 protect investors and the public interest. The Exchange believes that removing provisions that limit the registration requirements to traders of member organizations for which the Exchange is the DEA and instead requiring all traders associated with OTP Holders and OTP Firms to be registered with the Exchange would allow the Exchange to better monitor and regulate the activities of OTP Holders and OTP Firms. The Exchange also believes that offering an alternative limited registration category for Proprietary Traders should help ensure that all associated persons engaged in a securities business are, and will continue to be, properly registered, trained and qualified to perform their functions, and will make NYSE Arca rules consistent with other exchanges. The Exchange also notes that relocating rule text to a more logical place in its rules and removing outdated references to paper submissions that are no longer used will add clarity to the Exchange's rules.

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

Because the foregoing proposed rule does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and Rule 19b–4(f)(6) thereunder.[19]

The Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay. Waiver of the 30-day operative delay will enable associated persons of Exchange firms to avail themselves of the limited Proprietary Trader registration category, and qualify by taking the Series 56, as soon as it becomes available. For these reasons, the Commission hereby waives the operative delay.[20]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[14] Commentary .01 currently provides that Market Makers, Market Maker Authorized Traders, Floor Brokers, and Floor Clerks are not subject to continuing education requirements; the Exchange is not proposing any substantive change to this provision at this time. However, Proprietary Traders will be subject to continuing education requirements. The Exchange intends to add continuing education requirements for Market Makers, Market Maker Authorized Traders, Floor Brokers, and Floor Clerks in a separate filing in the future.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(c)(3)(B).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6).

[20] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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–NYSEARCA–2012–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2012–15. 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 Section, 100 F Street NE., Washington, DC 20549 on official business days between 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2012–15 and should be submitted on or before March 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4765 Filed 2–28–12; 8:45 am]

BILLING CODE 8011–01–P

[21] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13021 and #13022]

Massachusetts Disaster #MA–00047

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Massachusetts dated 02/21/2012.

Incident: Brookline Apartment Building Fire.

Incident Period: 01/16/2012.

Effective Date: 02/21/2012.

Physical Loan Application Deadline Date: 04/23/2012.

Economic Injury (EIDL) Loan Application Deadline Date: 11/21/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Norfolk.

Contiguous Counties: Massachusetts: Bristol, Middlesex, Plymouth, Suffolk, Worcester.

Rhode Island: Providence.

The Interest Rates are:

For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.125
Homeowners without Credit Available Elsewhere	2.063
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.125
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 13021 5 and for economic injury is 13022 0.

The States which received an EIDL Declaration # are Massachusetts, Rhode Island.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: February 21, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–4759 Filed 2–28–12; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and extensions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*.

(SSA)

Social Security Administration, DCRDP, Attn: Reports Clearance Officer, 107 Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400, Email address: *OPLM.RCO@ssa.gov*.

SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than March 30, 2012. Individuals can obtain copies of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–8783 or by writing to the above email address.

1. *Application for Mother's or Father's Insurance Benefits—20 CFR 404.339–404.342, 20 CFR 404.601–404.603—0960–0003.* Section 202(g) of the Social Security Act provides for the payment of monthly benefits to the widow or widower of an insured individual if the surviving spouse is caring for the deceased worker's child (who is entitled to Social Security benefits). SSA uses the information on Form SSA–5–F6 to determine an individual's eligibility for mother's or father's insurance benefits. The respondents are individuals caring for a child of the deceased worker who is applying for mother's or father's insurance benefits under the Old Age, Survivors, and Disability Insurance (OASDI) program.

Note: This is a correction notice. SSA published the incorrect burden information for this collection at 76 FR 78068, on December 15, 2011. We provide correct burden data here.

Type of Request: Revision of an OMB-approved information collection.

Collection instrument	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–5–F6 (paper)	1,611	1	15	403
MCS	26,045	1	15	6,511
MCS/Signature Proxy	26,044	1	14	6,077
Total	53,700			12,991

2. *Letter to Employer Requesting Information About Wages Earned By Beneficiary—20 CFR 416.703, 404.801 & 404.820—0960–0034.* SSA uses information from Form SSA–L725 to verify a beneficiary's wages when SSA has incomplete or questionable wage data. SSA uses the information to calculate the correct amount of benefits payable, and to maintain an accurate record of earnings for the beneficiary. Respondents are employers who provide information SSA needs to establish specific monthly earnings.

Note: This is a correction notice. SSA published this information collection as an extension on December 15, 2011 at 76 FR 78068. Since we are revising the Privacy Act Statement, this is actually a revision of an OMB-approved information collection.

Type of Request: Revision of an OMB-approved information collection.

Collection instrument	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–L725	150,000	1	40	100,000

3. *Letter to Employer Requesting Wage Information*—20 CFR 404.726—0960–0138. SSA must establish and verify wage information for Supplemental Security Income (SSI) applicants and recipients when determining SSI eligibility and payment amounts. SSA uses Form SSA–L4201 to collect this information. SSA uses the information to determine eligibility and proper payment amounts for SSI applicants and recipients. The respondents are employers of SSI applicants and recipients.

Type of Request: Extension of an OMB-approved information collection.

Collection instrument	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–L4201	133,000	1	30	66,500

4. *Claimant's Recent Medical Treatment—20 CFR 404.1512 and 416.912—0960–0292.* When Disability Determinations Services deny a claim at the reconsideration level, the claimant has a right to request a hearing before an administrative law judge (ALJ). For the hearing, SSA asks the claimant to complete and return the HA–4631 if the claimant's file does not reflect a current, complete medical history as the claimant proceeds through the appeals process. ALJs must obtain the information to update and complete the record and to verify the accuracy of the information. Through this process, ALJs can ascertain whether the claimant's situation has changed. The ALJs and hearing office staff use the response to make arrangements for consultative examination(s) and the attendance of an expert witness(es), if appropriate. During the hearing, the ALJ offers any completed questionnaires as exhibits and may use them to refresh the claimant's memory, and to shape their questions. The respondents are claimant's requesting hearings on entitlement to OASDI benefits or SSI payments.

Note: This is a correction notice. SSA published this information collection as an extension on December 15, 2011, at 76 FR 78076. Since we are revising the Privacy Act Statement, this is actually a revision of an OMB-approved information collection.

Type of Request: Revision of an OMB-approved information collection.

Collection instrument	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
HA–4631	200,000	1	10	33,333

5. *You Can Make Your Payment by Credit Card—0960–0462.* Using information from Form SSA–4588 and its electronic application, Form SSA–4589, SSA updates individuals' Social Security records to reflect payments made on their overpayments. In addition, SSA uses this information to process payments through the appropriate credit card company. SSA provides the SSA–4588 when we inform an individual that we detected an overpayment. Individuals may choose to make a one-time payment or recurring monthly payments by completing and submitting the SSA–4588.

SSA uses the SSA–4589 electronic intranet application only when individuals choose to telephone the Program Service Centers to make a one-time payment in lieu of completing Form SSA–4588. An SSA debtor contact representative completes the SSA–4589 electronic intranet application. Respondents are OASDI beneficiaries and SSI recipients who have outstanding overpayments.

Type of Request: Revision of an OMB-approved information collection.

Collection instrument	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–4588				
Paper form	13,200	1	10	2,200
SSA–4589				
Electronic intranet application	171,320	1	5	14,277
Totals	184,520	.....	.....	16,477

6. *Request for Internet Services—Password Authentication—20 CFR 401.45—0960–0632.* SSA uses a password infrastructure and process to verify the identity of individuals who choose to use the Internet system to conduct personal business with SSA electronically. To obtain a password from SSA's Individual Password Services, we ask an individual for certain information prescribed by SSA. SSA uses the information to authenticate an individual prior to issuing a temporary password. Once SSA authenticates individuals, and those individuals create a permanent password, they may use SSA's password protected services, e.g., account status, change of address, direct deposit elections, or changes. The respondents are individuals electing to do personal business with SSA electronically.

Type of Request: Extension of an OMB-approved information collection.

Collection instrument	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
Internet Requestors	3,092,069	1	10	515,345

Dated: February 24, 2012.

Faye Lipsky,

Reports Clearance Officer, Office of Regulations and Reports Clearance, Social Security Administration.

[FR Doc. 2012–4780 Filed 2–28–12; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 7821]

Culturally Significant Objects Imported for Exhibition Determinations: ''Bellini, Titian and Lotto: North Italian Paintings From the Accademia Carrara, Bergamo''

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, 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 ''Bellini, Titian and Lotto: North Italian Paintings from the Accademia Carrara, Bergamo'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY, from on or about May 15, 2012, until on or about September 3, 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 Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: February 22, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–4849 Filed 2–28–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7764]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 a.m. on Monday, April 9, 2012, in Room 1422 of the United States Coast Guard Headquarters Building, 2100 Second Street SW., Washington, DC 20593–7121. The primary purpose of the meeting is to prepare for the ninety-ninth Session of the International Maritime Organization's (IMO) Legal Committee to be held at the IMO Headquarters, London, England, United Kingdom, April 16–20, 2012.

The primary matters to be considered include:

Adoption of the agenda; report on credentials;

Monitoring the implementation of the 2010 Protocol to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea;

Consideration of a proposal to amend the limits of liability of the 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 96);

Provision of financial security in cases of abandonment, personal injury to, or death of seafarers related to entry into force of the International Labour Organization Maritime Labour Convention, 2006;

Fair treatment of seafarers in the event of a maritime accident;

Piracy;

Matters arising from the 106th and 107th regular sessions of the Council; the twenty-sixth extraordinary session of the Council; and the twenty-seventh regular session of the Assembly;

Technical co-operation activities related to maritime legislation;

Review of the status of conventions and other treaty instruments;

Application of the Committee's Guidelines;

Election of officers;

Any other business, including reconsideration of the Committee's recommendation related to liability and compensation issues connected to transboundary oil pollution damage from offshore exploration and exploitation activities;

Consideration of the report of the Committee on its ninety-ninth session.

The public should be aware that Assembly, at its twenty-seventh session in resolution A.1058(27) (20 December 2011), invited Member States and other concerned parties to submit proposals to the Committee to enable consideration of developing guidance to assist (1) in the collation and preservation of evidence following the allegation of a serious crime onboard, or following a report of a missing person from, a ship and (2) in the pastoral and medical care of alleged victims of serious crimes onboard ships. Although no such formal proposal has been received at this time, the U.S. delegation anticipates that this issue will be raised at this session.

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Ms. Bronwyn G. Douglass, by email at *bronwyn.douglass@uscg.mil*, by phone at (202) 372–3792, by fax at (202) 372–3975, or in writing at Commandant (CG–0941), U.S. Coast Guard, 2100 2nd Street SW., Stop 7121, Washington, DC 20593–7121 not later than April 2, 2012, 7 days prior to the meeting. Requests made after April 2, 2012 might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited. Additional information regarding this and other IMO SHC public meetings may be found at: *www.uscg.mil/imo*.

Dated: February 22, 2012.

Brian Robinson,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2012–4851 Filed 2–28–12; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 7763]

U.S. Department of State Advisory Committee on Private International Law (ACPIL): Notice of Public Meeting on (1) Jurisdiction and the Recognition and Enforcement of Judgments, and (2) Choice of Law in International Commercial Contracts

The Office of the Assistant Legal Adviser for Private International Law, Department of State, hereby gives notice of a public meeting to discuss two topics on the agenda of the upcoming General Affairs and Policy Council of the Hague Conference on Private International Law. The public meeting will take place on Tuesday, April 3, 2012 from 10 a.m. to 2 p.m. at the main State Department building (Harry S Truman Building). This is not a meeting of the full Advisory Committee.

Jurisdiction and the Recognition and Enforcement of Judgments: An ACPIL meeting on this topic was held on March 23, 2011. At the subsequent General Affairs and Policy Council held in April 2011, it was agreed to establish a small experts' group ''to explore the background of the Judgments Project and recent developments with the aim to assess the possible merits of resuming the Judgments Project.'' That experts' group will hold its initial meeting on April 12–14, 2012 in The Hague, and the results of that meeting will be reported to the General Affairs and Policy Council, which meets April 17–20.

Choice of law in international commercial contracts: A working group composed of experts from various countries has been meeting over the past couple of years to develop non-binding principles relevant to the choice of law in international commercial contracts. The draft principles prepared by that working group will be considered at the General Affairs and Policy Council.

The purpose of the public meeting is to obtain the views of concerned stakeholders on these topics in advance of the upcoming Hague Conference meetings.

Prior to the Study Group meeting, we will send out—to all those who indicate that they intend to attend the meeting or participate by telephone, or who otherwise wish to comment—the

documents prepared by the Permanent Bureau of the Hague Conference on each of these topics, which will include the draft principles on choice of law. Those who cannot attend but wish to comment are welcome to do so by email to Keith Loken at *lokenk@state.gov*.

Time and Place: The meeting will take place in Room 1205, Harry S Truman Building, 2201 C Street, NW., Washington, DC 20520. Participants should plan to arrive by 9:30 p.m. for visitor screening. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

Public Participation: This meeting is open to the public, subject to the capacity of the meeting room. Access to the building is strictly controlled. For pre-clearance purposes, those planning to attend should phone Tricia Smeltzer (202–776–8423) or Niesha Toms (202–776–8420) and provide your full name, address, date of birth, citizenship, driver's license or passport number, and email address. This will greatly facilitate entry into the building. Participants will be met inside the diplomatic entrance at C Street and, once badges are obtained, escorted to the meeting room. A member of the public needing reasonable accommodation should advise Ms. Smeltzer or Ms. Toms not later than March 27. Requests made after that date will be considered, but might not be able to be fulfilled. If you would like to participate by telephone, please contact Ms. Smeltzer or Ms. Toms to obtain the call-in number and other information.

Data from the public is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information.

Dated: February 22, 2012.

Keith Loken,

Assistant Legal Adviser, Private International Law, Department of State.

[FR Doc. 2012–4854 Filed 2–28–12; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 7809]

Meeting of the Joint Forum on Environmental Technical Cooperation Pursuant to the United States-Jordan Joint Statement on Environmental Technical Cooperation

ACTION: Notice of the meeting of the Joint Forum on Environmental Technical Cooperation and request for comments.

SUMMARY: The Department of State is providing notice that, as set forth in paragraph three of the United States-Jordan Joint Statement on Environmental Technical Cooperation (''Joint Statement''), the United States and Jordan will hold a meeting of the Joint Forum on Environmental Technical Cooperation (''Joint Forum'') at 9 a.m. on March 4, 2012, at the Hashemite Auditorium, Royal Scientific Society, in Amman, Jordan. If you are interested in attending, please email Rob Wing at *WingRD@state.gov*. See below under **SUPPLEMENTARY INFORMATION** for additional details on the background and purpose of the meeting.

During the meeting, the United States and Jordan intend to present a brief history of U.S.-Jordan environmental cooperation, review activities under the 2008–2011 Work Program, and approve a 2012–2013 Work Program. The entire meeting will be open to the public and include public question and answer sessions. The meeting will be conducted in English and Arabic. The Department of State invites interested organizations and members of the public to submit written comments or suggestions regarding items to include on the agenda and to attend the meeting. In preparing comments, we encourage submitters to refer to: (1) The United States-Jordan Joint Statement on Environmental Technical Cooperation; (2) the United States-Jordan 2008–2011 Work Program on Environmental Cooperation; (3) Article 5 (Environment) of the Agreement Between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area (U.S.-Jordan Free Trade Agreement (FTA)); and (4) the environmental review of the U.S.-Jordan FTA. These documents are available at: *http://www.state.gov/e/oes/env/trade/jordan/index.htm*.

DATES: The United States and Jordan will hold the Joint Forum meeting at 9 a.m. on March 4, 2012, at the Hashemite Auditorium, Royal Scientific Society, in Amman, Jordan. If you are interested in attending, please email Rob Wing by March 2, 2012 at *WingRD@state.gov*. To ensure timely consideration, please submit comments and suggestions in writing no later than March 2, 2012.

ADDRESSES: Please submit written comments or suggestions via email (*WingRD@state.gov*) or fax ((202) 647–5947) to Rob Wing, Office of Environmental Policy, Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, with the subject line ''United States-Jordan Joint Forum Meeting.'' If you have access to the Internet, you may make comments electronically by going to *http://contact-us.state.gov/app/ask*.

FOR FURTHER INFORMATION CONTACT: Rob Wing, telephone (202) 647–6780 or email (*WingRD@state.gov*).

SUPPLEMENTARY INFORMATION: The United States and Jordan announced the establishment of the United States-Jordan Joint Forum on Environmental Technical Cooperation (Joint Forum) when they signed the United States-Jordan Joint Statement on Environmental Technical Cooperation (Joint Statement), on October 24, 2000, along with the U.S.-Jordan FTA. The Joint Forum is to meet regularly and advance environmental protection in Jordan by developing environmental technical cooperation initiatives, which take into account environmental priorities, and which are agreed to by the two governments. In paragraph 4 of the Joint Statement, the countries identify an initial focus of technical cooperation on Jordanian environmental quality issues and the development and effective implementation of Jordanian environmental laws, as defined in Articles 5.4 and 18.2(a) of the U.S.-Jordan FTA. The Joint Forum has met twice since 2000—in September 2004 and March 2009—and issued two plans for implementing the Joint Statement. The first—a Plan of Action—focused on implementing a strategic vision for Jordan's Ministry of Environment, established in 2002, to promote sustainable economic growth and development. The plan outlined activities to, among other things, strengthen the Ministry's capacity for setting, implementing, and ensuring compliance with environmental standards; harness market forces to protect the environment while bringing economic benefits; undertake industrial wastewater treatment and hazardous waste management for a target region; seek out economic benefits of ecotourism; and promote the development of a regional network of environmental lawmakers and enforcement officials. The second, a

Work Program for 2008–2011, identifies long-term goals and specifies activities in four priority areas. The long-term goals are to achieve: (1) Compliance with obligations in Article 5 (Environment) of the U.S.-Jordan FTA; (2) improved protection and conservation of the environment, including natural resources; (3) transparency and meaningful public participation in environmental decision-making; and (4) a culture of environmental protection and compliance with environmental laws through, among other things, the promotion of economic opportunities, voluntary measures to enhance environmental performance, and job creation. The priority areas are: (1) Institutional and policy strengthening; (2) biodiversity conservation and improved management of protected areas; (3) improved private sector environmental performance; and (4) environmental education, transparency, and public participation in environmental decision-making and enforcement. For the 2012–2013 Work Program, we anticipate building upon the cooperative work initiated under the previous two plans, while focusing on creating green jobs and other economic opportunities that promote green growth and sustainable development.

Dated: February 23, 2012.

George N. Sibley,

Director, Office of Environmental Policy, Department of State.

[FR Doc. 2012–4857 Filed 2–28–12; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Enabling a Secure Environment for Vehicle-to-Vehicle and Vehicle-to-Infrastructure Transactions Workshop; Notice of Public Meeting

AGENCY: Research and Innovative Technology Administration, U.S. Department of Transportation.

ACTION: Notice.

The U.S. Department of Transportation (USDOT) Intelligent Transportation System Joint Program Office (ITS JPO) will hold a free Policy Research Workshop on Enabling a Secure Environment for Vehicle-to-Vehicle (V2V) and Vehicle-to-Infrastructure (V2I) Transactions on April 19–20, 2012, 8:30 a.m.–5 p.m. at the Capital Hilton, 1001 16th Street NW., Washington, DC 20036, 202–393–1000. This two-day workshop will give participants an opportunity to learn about and provide input into research being conducted on potential organizational and business models for supporting security and data transaction needs for V2V and V2I crash avoidance and other applications. The workshop takes place mid-point for two related research efforts and will be structured primarily around breakout sessions for discussing critical issues and obtaining participant feedback. Final results of this research will be presented in August 2012 during the annual Connected Vehicle Safety public meeting and via other publicly available forums and on the ITS JPO Web site.

Persons planning to attend the workshop should register online no later than April 13, 2012 at *http://www.itsa.org/policyworkshop.* For additional questions, please contact Adam Hopps at *Ahopps@ITSA.org.*

About the Connected Vehicle Secure Environment

Establishing a secure trust environment among vehicles and other legitimate equipment is a key challenge for V2V and V2I crash avoidance and other applications. Currently a public key infrastructure approach to security involving the exchange of digital certificates among legitimate trusted vehicles and/or equipment is being analyzed and tested. USDOT's Connected Vehicle Policy Research Program is concerned with defining requirements to implement such a system on a national scale, including such questions as:

- What are the functional requirements for certificate exchange and other processes?
- What communications links and networks could support these requirements?
- What are the organizational requirements for supporting back end processes?
- What are estimated costs for supporting these requirements?
- What are potential business models for supporting such a network, to attract users and revenue to finance such a system?
- What do different approaches imply, in terms of potential levels of security protection?
- What do different ownership options imply?
- How could the certificate management system be rolled out across the nation over time?
- Are there opportunities to integrate needed functions into existing systems or organizations?

Issued in Washington, DC, on the 22th day of February 2012.

John Augustine,

Managing Director, ITS Joint Program Office.

[FR Doc. 2012–4809 Filed 2–28–12; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0376]

Hours of Service of Drivers: Underwater Construction Corporation Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA has received an application from the Underwater Construction Corporation (''UCC'') for an exemption for 165 of its drivers from the hours-of-service (HOS) record of duty status provision in 49 CFR 395.8 that requires every commercial motor vehicle driver to record his/her duty status for each 24 hour period using methods prescribed in that section. UCC claims that approximately 88 percent of its work is performed for utilities, and that such driving operations fall under the ''Utility Service Vehicle'' (USV) exemption in 49 CFR 395.1(n). UCC would like to use its payroll system, which it claims tracks an employee's time spent driving and working, to record drivers' record of duty status for driving operations not covered by the USV exemption. UCC states that if granted an exemption from 49 CFR 395.8, it would continue to track employee hours through its payroll system to ensure compliance with the HOS rules. UCC believes its payroll system provides a reliable proactive approach to tracking employee hours.

DATES: Comments must be received on or before March 30, 2012.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2011–0376 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *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. E.T., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to *www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

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 U.S. Department of Transportation's online privacy policy at *www.dot.gov/privacy* or the complete Privacy Act Statement in the **Federal Register** published on December 29, 2010 (75 FR 82133).

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Bus and Truck Standards and Operations; Telephone: 202–366–4325. Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period, and explain the terms and conditions, of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

UCC operates as a commercial diving contractor that provides underwater inspection, maintenance, construction, and technical support services. The company has offices in Connecticut, Michigan, and Tennessee, and performs diving services for clients around the world. UCC maintains a total of 37 commercial motor vehicles with gross vehicle weight or gross combination weight ratings of 10,001 pounds or more, and employs 165 personnel who operate these vehicles.

UCC's driving operations are performed for the sole purpose of transporting personnel and equipment to and from job sites and account for two percent of the man-hours worked each year. UCC claims that 88 percent of its work is performed for utilities and that the majority of its driving falls under the USV exemption in 49 CFR 395.1(n). Instead of complying with the provisions in 49 CFR 395.8 for the 12 percent of hours not covered under the USV exemption, UCC would like to use its payroll system to record the drivers' records of duty status. According to UCC, if granted the exemption from 49 CFR 395.8, it would continue to track employee hours, which include time spent driving and working, through its payroll system to ensure they are not in violation of the HOS rules.

A copy of UCC's exemption application is available for review in the docket for this notice.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment on the UCC's application for an exemption from the driver's record of duty status rule in 49 CFR part 395. The Agency will consider all comments received by close of business on March 30, 2012. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued on: February 22, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–4871 Filed 2–28–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No FMCSA–2011–0097]

Pilot Program on NAFTA Trucking Provisions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for public comment.

SUMMARY: FMCSA announces and requests public comment on data and information concerning the Pre-Authorization Safety Audit (PASA) for a motor carrier that applied to participate in the Agency's long-haul pilot program to test and demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the municipalities in the United States on the United States-Mexico international border or the commercial zones of such municipalities. This action is required by the ''U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007'' and all subsequent appropriations.

DATES: Comments must be received on or before March 12, 2012.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2011–0097 by any one of the following methods: *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, (M–30), U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., West Building, Ground Floor, Room 12–140, Washington, DC 20590–0001.

• *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. All submissions must include the Agency name and docket number for this notice. See the ''Public Participation'' heading below for instructions on submitting comments and additional information.

Note that all comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov*. Please see the ''Privacy Act'' heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground floor of the DOT Headquarters Building at 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

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 Privacy Act System of Records Notice for the DOT Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf*.

Public Participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* Web site. Comments received after the comment closing date will be included in the docket, and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Marcelo Perez, FMCSA, North American Borders Division, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Telephone (512) 916–5440 Ext. 228; email *marcelo.perez@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

On May 25, 2007, the President signed into law the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (the Act), (Pub. L. 110–28, 121 Stat. 112, 183, May 25, 2007). Section 6901 of the Act requires that certain actions be taken by the Department of Transportation (the Department) as a condition of obligating or expending appropriated funds to grant authority to Mexico-domiciled motor carriers to operate beyond the municipalities in the United States on the United States-Mexico international border or the commercial zones of such municipalities (border commercial zones).

On July 8, 2011, FMCSA announced in the **Federal Register** [76 FR 40420] its intent to proceed with the initiation of a U.S.-Mexico cross-border long-haul trucking pilot program to test and demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the border commercial zones as detailed in the Agency's April 13, 2011, **Federal Register** notice [76 FR 20807]. The pilot program is a part of FMCSA's implementation of the North American Free Trade Agreement (NAFTA) cross-border long-haul trucking provisions in compliance with section 6901(b)(2)(B) of the Act. FMCSA reviewed, assessed, and evaluated the required safety measures as noted in the July 8, 2011, notice and considered all comments received on or before May 13, 2011, in response to the April 13, 2011, notice. Additionally, to the extent practicable, FMCSA considered comments received after May 13, 2011.

In accordance with section 6901(b)(2)(B)(i) of the Act, FMCSA is required to publish in the **Federal Register,** and provide sufficient opportunity for public notice and comment comprehensive data and information on the PASAs conducted of motor carriers domiciled in Mexico that are granted authority to operate beyond the border commercial zones. This notice serves to fulfill this requirement.

FMCSA is publishing for public comment the data and information relating to one PASA that was completed on November 15, 2011. FMCSA announces that the Mexico-domiciled motor carrier in Table 1 successfully completed the PASA. Notice of this completion was also published in the FMCSA Register.

Tables 2, 3 and 4 all titled (''Successful Pre-Authorization Safety Audit (PASA) Information'') set out additional information on the carrier(s) noted in Table 1. A narrative description of each column in the tables is provided as follows:

A. *Row Number in the Appendix for the Specific Carrier:* The row number for each line in the tables.

B. *Name of Carrier:* The legal name of the Mexico-domiciled motor carrier that applied for authority to operate in the United States (U.S.) beyond the border commercial zones and was considered for participation in the long-haul pilot program.

C. *U.S. DOT Number:* The identification number assigned to the Mexico-domiciled motor carrier and required to be displayed on each side of the motor carrier's power units. If granted provisional operating authority, the Mexico-domiciled motor carrier will be required to add the suffix ''X'' to the ending of its assigned U.S. DOT Number for those vehicles approved to participate in the pilot program.

D. *FMCSA Register Number:* The number assigned to the Mexico-domiciled motor carrier's operating authority as found in the FMCSA Register.

E. *PASA Initiated:* The date the PASA was initiated.

F. *PASA Completed:* The date the PASA was completed.

G. *PASA Results:* The results upon completion of the PASA. The PASA receives a quality assurance review before approval. The quality assurance process involves a dual review by the FMCSA Division Office supervisor of the auditor assigned to conduct the PASA and by the FMCSA Service Center New Entrant Specialist designated for the specific FMCSA Division Office. This dual review ensures the successfully completed PASA was conducted in accordance with FMCSA policy, procedures and guidance. Upon approval, the PASA results are uploaded into the FMCSA's Motor Carrier Management Information System (MCMIS). The PASA information and results are then recorded in the Mexico-domiciled motor carrier's safety performance record in MCMIS.

H. *FMCSA Register:* The date FMCSA published notice of a successfully completed PASA in the FMCSA Register. The FMCSA Register notice advises interested parties that the application has been preliminarily granted and that protests to the application must be filed within 10 days of the publication date. Protests are filed with FMCSA Headquarters in Washington, DC. The notice in the FMCSA Register lists the following information:

a. Current registration number (e.g., MX–123456);

b. Date the notice was published in the FMCSA Register;

c. The applicant's name and address; and

d. Representative or contact information for the applicant.

The FMCSA Register may be accessed through FMCSA's Licensing and

Insurance public Web site at *http://li-public.fmcsa.dot.gov/,* and selecting FMCSA Register in the drop down-menu.

I. *U.S. Drivers:* The total number of the motor carrier's drivers approved for long-haul transportation in the United States beyond the border commercial zones.

J. *U.S. Vehicles:* The total number of the motor carrier's power units approved for long-haul transportation in the United States beyond the border commercial zones.

K. *Passed Verification of 5 Elements (Yes/No):* A Mexico-domiciled motor carrier will not be granted provisional operating authority if FMCSA cannot verify all of the following five mandatory elements. FMCSA must:

a. Verify a controlled substances and alcohol testing program consistent with 49 CFR part 40.

b. Verify a system of compliance with hours-of-service rules of 49 CFR part 395, including recordkeeping and retention;

c. Verify the ability to obtain financial responsibility as required by 49 CFR 387, including the ability to obtain insurance in the United States;

d. Verify records of periodic vehicle inspections; and

e. Verify the qualifications of each driver the carrier intends to use under such authority, as required by 49 CFR parts 383 and 391, including confirming the validity of each driver's Licencia Federal de Conductor and English language proficiency.

L. *If No, Which Element Failed:* If FMCSA cannot verify one or more of the five mandatory elements outlined in 49 CFR part 365, Appendix A, Section III, this column will specify which mandatory element(s) cannot be verified.

Please note that for items L through P below, during the PASA, after verifying the five mandatory elements discussed in item K above, FMCSA will gather information by reviewing a motor carrier's compliance with ''acute and critical'' regulations of the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs). Acute regulations are those where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall basic safety management controls of the motor carrier. Critical regulations are those where noncompliance relates to management and/or operational controls. These regulations are indicative of breakdowns in a carrier's management controls. A list of acute and critical regulations is included in 49 CFR part 385, Appendix B, Section VII.

Parts of the FMCSRs and HMRs having similar characteristics are combined together into six regulatory areas called ''factors.'' The regulatory factors are intended to evaluate the adequacy of a carrier's management controls.

M. *Passed Phase 1, Factor 1:* A ''yes'' in this column indicates the carrier has successfully met Factor 1 (listed in part 365, Subpart E, Appendix A, Section IV(f)). Factor 1 includes the General Requirements outlined in parts 387 (Minimum Levels of Financial Responsibility for Motor Carriers) and 390 (Federal Motor Carrier Safety Regulations—General).

N. *Passed Phase 1, Factor 2:* A ''yes'' in this column indicates the carrier has successfully met Factor 2, which includes the Driver Requirements outlined in parts 382 (Controlled Substances and Alcohol Use and Testing), 383 (Commercial Driver's License Standards; Requirements and Penalties) and 391 (Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors).

O. *Passed Phase 1, Factor 3:* A ''yes'' in this column indicates the carrier has successfully met Factor 3, which includes the Operational Requirements outlined in parts 392 (Driving of Commercial Motor Vehicles) and 395 (Hours of Service of Drivers).

P. *Passed Phase 1, Factor 4:* A ''yes'' in this column indicates the carrier has successfully met Factor 4, which includes the Vehicle Requirements outlined in parts 393 (Parts and Accessories Necessary for Safe Operation) and 396 (Inspection, Repair and Maintenance) and vehicle inspection and out-of-service data for the last 12 months.

Q. *Passed Phase 1, Factor 5:* A ''yes'' in this column indicates the carrier has successfully met Factor 5, which includes the hazardous material requirements outlined in parts 171 (General Information, Regulations, and Definitions), 177 (Carriage by Public Highway), 180 (Continuing Qualification and Maintenance of Packagings) and 397 (Transportation of Hazardous Materials; Driving and Parking Rules).

R. *Passed Phase 1, Factor 6:* A ''yes'' in this column indicates the carrier has successfully met Factor 6, which includes Accident History. This factor is the recordable accident rate during the past 12 months. A recordable ''accident'' is defined in 49 CFR 390.5, and means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in a fatality; a bodily injury to a person who, as a result of the injury, immediately received medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

S. *Number U.S. Vehicles Inspected:* The total number of vehicles (power units) the motor carrier is approved to operate in the United States beyond the border commercial zones that received a vehicle inspection during the PASA. During a PASA, FMCSA inspected all power units to be used by the motor carrier in the pilot program and applied a current Commercial Vehicle Safety Alliance (CVSA) inspection decal, if the inspection is passed successfully. This number reflects the vehicles that were inspected, irrespective of whether the vehicle received a CVSA inspection at the time of the PASA decal as a result of a passed inspection.

T. *Number U.S. Vehicles Issued CVSA Decal:* The total number of inspected vehicles (power units) the motor carrier is approved to operate in the United States beyond the border commercial zones that received a CVSA inspection decal as a result of an inspection during the PASA.

U. *Controlled Substances Collection:* Refers to the applicability and/or country of origin of the controlled substance and alcohol collection facility that will be used by a motor carrier that has successfully completed the PASA.

a. ''US'' means the controlled substance and alcohol collection facility is based in the United States.

b. ''MX'' means the controlled substance and alcohol collection facility is based in Mexico.

c. ''Non-CDL'' means that during the PASA, FMCSA verified that the motor carrier is not utilizing commercial motor vehicles subject to the commercial driver's license requirements as defined in 49 CFR 383.5 (Definition of Commercial Motor Vehicle). Any motor carrier that does not operate commercial motor vehicles as defined in § 383.5 is not subject to DOT controlled substance and alcohol testing requirements.

V. *Name of Controlled Substances and Alcohol Collection Facility:* Shows the name and location of the controlled substances and alcohol collection facility that will be used by a Mexico-domiciled motor carrier who has successfully completed the PASA.

TABLE 1

Row number in Tables 2, 3 and 4 of the Appendix to today's notice	Name of carrier	USDOT No.
1	Baja Express Transportes SA de CV	2194257

TABLE 2—SUCCESSFUL PRE-AUTHORIZATION SAFETY AUDIT (PASA) INFORMATION

[See also Tables 3 and 4]

Column A—Row No.	Column B—name of carrier	Column C—US DOT No.	Column D—FMCSA Register No.	Column E—PASA initiated	Column F—PASA completed	Column G—PASA results	Column H—FMCSA Register	Column I—US drivers	Column J—US vehicles
1	Baja Express Transportes SA de CV.	2194257	Pending	11/8/11	11/15/11	Pass	02/27/12	1	1

TABLE 3—SUCCESSFUL PRE-AUTHORIZATION SAFETY AUDIT (PASA) INFORMATION

[See also Tables 2 and 4]

Column A—Row No.	Column B—name of carrier	Column C—US DOT No.	Column D—FMCSA Register No.	Column K—passed verification of 5 elements (yes/no)	Column L—if no, which element failed	Column M—passed phase 1 factor 1	Column N—passed phase 1 factor 2	Column O—passed phase 1 factor 3	Column P—passed phase 1 factor 4
1	Baja Express Transportes SA de CV.	2194257	Pending	Yes		Pass	Pass	Pass	Pass

TABLE 4—SUCCESSFUL PRE-AUTHORIZATION SAFETY AUDIT (PASA) INFORMATION AS OF SEPTEMBER 9, 2011

[See also Tables 2 and 3]

Column A—Row No.	Column B—name of carrier	Column C—US DOT No.	Column D—FMCSA Register No.	Column Q—passed phase 1 factor 5	Column R—passed phase 1 factor 6	Column S—number US vehicles inspected	Column T—number US vehicles issued CVSA decal	Column U—controlled substance collection	Column V—name of controlled substances and alcohol collection facility
1	Baja Express Transportes SA de CV.	2194257	Pending	N/A	Pass	1	1	U.S.	Fernando Ruiz, Inc

In an effort to provide as much information as possible for review, the application and PASA results for this carrier are posted at the Agency's Web site for the pilot program at *http://www.fmcsa.dot.gov/intl-programs/trucking/Trucking-Program.aspx.* For carriers that participated in the Agency's demonstration project that ended in 2009, copies of the previous PASA and compliance review, if conducted, are also posted. All documents were redacted so that personal information regarding the drivers is not released. Sensitive business information, such as the carrier's tax identification number, is also redacted. In response to previous comments received regarding the PASA notice process, FMCSA also posted copies of the vehicle inspections conducted during the PASA in the PASA document.

A list of the carrier's vehicles approved by FMCSA for use in the pilot program is also available at the above referenced Web site.

To date, no carriers have failed the PASA. The Act only requires publication of data for carriers receiving operating authority, as failure to successfully complete the PASA precludes the carrier from being granted authority to participate in the long-haul pilot program. FMCSA will publish this information to show motor carriers that failed to meet U.S. safety standards.

Request for Comments

In accordance with the Act, FMCSA requests public comment from all interested persons on the PASA information presented in this notice. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, the FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

FMCSA notes that under its regulations, preliminary grants of authority, pending the carrier's showing of compliance with insurance and process agent requirements and the resolution of any protests, are publically noticed through publication in the FMCSA Register. Any protests of such grants must be filed within 10 days of publication of notice in the FMCSA Register.

Issued on: February 24, 2012.

William A. Bronrott,

Deputy Administrator.

[FR Doc. 2012–4873 Filed 2–28–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0050]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption, request for comments.

SUMMARY: FMCSA announces receipt of applications from 5 individuals for an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition which is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce. If granted, the exemptions would enable these individuals with seizure disorders to operate CMVs in interstate commerce.

DATES: Comments must be received on or before March 30, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2012–0050 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line 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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person 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; Apr. 11, 2000). This information is also available at *http://Docketinfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Elaine Papp, Chief, Medical Programs Division (202) 366–4001, or via email at *fmcsamedical@dot.gov,* or by letter FMCSA, Room W64–113, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The five individuals listed in this notice have recently requested an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs as defined in 49 CFR 390.5, in interstate commerce. Section 391.41(b)(8) states that 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 the loss of consciousness or any loss of ability to control a commercial motor vehicle.

FMCSA provides medical advisory criteria for use by medical examiners in determining whether drivers with certain medical conditions should be certified to operate commercial motor vehicles in intrastate commerce. The advisory criteria indicates that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause which did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be 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 anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver had 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, has no existing residual complications, and is not taking anti-seizure medication. Drivers with a history of epilepsy/seizures off anti-seizure medication and seizure-free for 10 years may be qualified to operate 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 anti-seizure medication for a 5-year period or more.

Summary of Applications

Todd Brock

Mr. Brock is a 53-year-old driver in the state of Colorado. He previously drove delivery trucks for UPS. He was diagnosed with a seizure disorder and given anti-seizure medication. He continues to take anti-seizure medication with the dosage and frequency remaining the same for 3 years. Mr. Brock has been seizure-free for 9 years, having his last seizure January 2003. If granted the exemption, he would return to driving a delivery truck for UPS.

Darren Carroll

Mr. Carroll is a 37-year-old CMV driver in the state of Virginia. Mr. Carroll had a single seizure event in March 2008 following a blow to the back of his head. He has never been on anti-seizure medication, remaining seizure-free since the single seizure. His last seizure was March 2008.

Charles Johnson

Mr. Johnson is a 36-year-old CMV driver in the state of Kansas. Mr. Johnson was diagnosed with petite mal

seizures as an infant. These seizures last only a few seconds, and he has not had any grand mal seizures. His last seizure was in April 2011. He has been on anti-seizure medication with the dosage and frequency remaining the same for 4 months. If granted the exemption, he would return to driving a school bus. His physician has released him to return to driving.

Diana Mugford

Ms. Mugford is a 44-year-old CDL driver in the state of Vermont. She was diagnosed with complex partial seizures and given anti-seizure medication. Her last seizure was in 2004. She continues to take anti-seizure medication with the dosage and frequency remaining the same for 8 years. She has remained seizure-free for 8 years. If granted the exemption, she would return to driving tractor trailer trucks in interstate commerce. Her physician endorses her receiving an exemption and states he feels ''she would be among the safer drivers on the highway.''

James Wiggins

Mr. Wiggins is a 57-year-old CMV driver in the state of Florida. Mr. Wiggins had a single seizure in March 2008 and was diagnosed with a brain tumor. He had the tumor removed in April 2008 and put on anti-seizure medication. He has been off of any anti-seizure medication for 3 years and has remained seizure free for 4 years. If granted the exemption, he would return to driving tractor trailer trucks.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on the exemption applications described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: February 22, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–4869 Filed 2–28–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[4910–EX–P]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: FMCSA announces its denial of 115 applications from individuals who requested an exemption from the Federal vision standard applicable to interstate truck and bus drivers and the reasons for the denials. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions does not provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, U.S. Department of Transportation, FMCSA, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal vision standard for a renewable 2-year period if it finds ''such an exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such an exemption.'' The procedures for requesting an exemption are set forth in 49 CFR part 381.

Accordingly, FMCSA evaluated 115 individual exemption requests on their merit and made a determination that these applicants do not satisfy the criteria eligibility or meet the terms and conditions of the Federal exemption program. Each applicant has, prior to this notice, received a letter of final disposition on the exemption request. Those decision letters fully outlined the basis for the denial and constitute final Agency action. The list published in this notice summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial.

One applicant, Donald Dickerson, lacked sufficient driving experience during the 3-year period prior to the date of his application.

The following 21 applicants had no experience operating a CMV:

Michael Meke-Eze
David M. Krause
Michael R. Morgan
Alexander D. Avery
Alan J. Chmielews
Kevie D. Clark
Shatisha Y. Tharrinton
Garn J. Hickam
Mohamed Sannoh
Daniel Ponce
Amanda Upchurch
David W. Cox
Dean A. Saaranen
David L. Stout
Kasey L. Tanner
James J. Perkins
William N. Wheeler
Glen Stryker
Donald F. Evans
Frank Ferrara
Michael B. Timmins

The following 28 applicants did not have 3 years of experience driving a CMV on public highways with their vision deficiencies:

Russell Burden
Norvan Brown
Eddie R. Del Angel
George E. Gross
Wayne Figroid
Darrell E. Graumann
Heidi J. Morse
Ian D. Holbin
Boyd M. Kinzer, Jr.
Michael Hamm
Kenneth P. Nichols
Nicholas E. Lemaster
Terry Kenne
Brandon R. Ferguson
Dennis Yost
Alex P. Makhanov
Lonnie L. Tincher
Jessie A. Tanner
Gabirl A. Natale
Martin C. Baschab
Donald Hooper
Gregory Chiropolos
Ronnie G. Lynn
Malinda N. Parks
Mark Smith
Stephen C. Linardos
Dani A. Alvarez
Shawn L. Smith

The following 12 applicants did not have 3 years of recent experience driving a CMV with the vision deficiency:

Joshua H. Boatright
Domingo V. Perez
James F. Blush
Dean L. Christenson
George R. Boutin
Eugene P. Fournier
Rudolph J. McPhearson
Saint Marc Louis
Edgar Daye
Anthony Bartel
Ronald Bounds
Paul L. Baker

The following 7 applicants did not have sufficient driving experience

during the past 3 years under normal highway operating conditions:

Steve Volden
Alan D. Mohoric
Victor Kitchen
Michael E. Mellon
Cesar Villa
Larry Allen
Terry Blair

The following 4 applicants had their commercial driver's license suspended during the 3-year review period for moving violations. Applicants do not qualify for an exemption with a suspension during the 3-year period:

William C. Pinson
Wayne L. Green
Stephen R. Marshall
James A. Fassbender

The following 6 applicants were denied for miscellaneous/multiple reasons:

Paul Kissner, Jr.
Nery Madera
Richard Wilson
David Traylor
Lucio Nieves
Dewey W. Justice

The following applicant, William J. Hoitsma, Jr., was denied because his vision was not stable for the entire 3-year period.

The following applicant, Kentucky J. Coby, was denied because he does not meet the vision standard in the better eye.

The following 9 applicants met the current federal vision standards. Exemptions are not required for applicants who meet the current regulations for vision:

Richard Kreye
Virgil L. Adams
Hamidullah Khan
Victor Ramirez
Dale Crumb
Henry DeLaRosa
David M. Taylor
Dwight Hicks
Robert H. White

The following 19 applicants were denied because they will not be driving interstate, interstate commerce, or not required to carry a DOT medical card:

Ronald Baker
Lee H. Freeman, Jr.
Ronald R. Detwiler
Diana L. Bartlow
Akbar Roohani
Danny Michael Harris
Richard Karbo
Mark Birkins
Marshall J. Desadier
Jason Butcher
Michael Layher
James Troxler
Sebastian G. Jachymiak
Joel G. Allard
Donald D. Barnett, Jr.
Brent A. Torrey
Harold Johnson
Thomas B. Bliven
Tomas J. Ortega

Finally, the following 7 applicants perform transportation for the federal government, state, or any political subdivision of the state.

William M. Bugbee
Albert E. Richan
Gregory K. Moon
Joseph Okolowski
Gary S. Carrol
Charlie C. Kimmel
Julianne M. Kaeser

Issued on: February 22, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–4870 Filed 2–28–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0019]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ALEXIBELL; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 30, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0019. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ALEXIBELL is:

Intended Commercial Use of Vessel: ''Vessel will be used for private parties by reservation only (12 or less) in near coastal waters of the Gulf of Mexico from Naples to Tampa Bay. Emphasis is on 4 hr cruises, dinner and sunset cruises.''

Geographic Region: ''Florida.''

The complete application is given in DOT docket MARAD–2012–0019 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: February 21, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–4723 Filed 2–28–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0017]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel PLAYING HOOKY; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 30, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0017. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, Email *Joann.Spittle@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PLAYING HOOKY is:

Intended Commercial Use of Vessel: ''Overnight sailing charter and dive charters along Alabama/Florida panhandle coast. James has a six pack license.''

Geographic Region: ''Alabama, Florida.''

The complete application is given in DOT docket MARAD–2012–0017 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: February 21, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–4731 Filed 2–28–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0018]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ELCIE; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 30, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0018. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ELCIE is:

Intended Commercial Use of Vessel: ''To carry passengers for the purpose of Expedition Style charters and sail training education aboard a multi-hull sailing vessel.''

Geographic Region: ''Maryland and Virginia—Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, North Carolina, South Carolina, Georgia, and Florida.''

The complete application is given in DOT docket MARAD–2012–0018 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments

received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: February 21, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–4734 Filed 2–28–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0016]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel AVERY CLAIRE; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 30, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0016. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, Email *Joann.Spittle@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel AVERY CLAIRE is:

Intended Commercial Use of Vessel: ''Passenger charter—no more than six (6) passengers per charter.''

Geographic Region: ''Hawaii.''

The complete application is given in DOT docket MARAD–2012–0016 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: February 21, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–4728 Filed 2–28–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

[Docket: RITA 2008–0002]

Agency Information Collection; Activity Under OMB Review: Reporting Required for International Civil Aviation Organization (ICAO)

AGENCY: Research and Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need and usefulness of BTS collecting supplemental data for the International Civil Aviation Organization (ICAO). Comments are requested concerning whether (1) the supplemental reports are needed by BTS to fulfill the United States treaty obligation of furnishing financial and traffic reports to ICAO; (2) BTS accurately estimated the reporting burden; (3) there are other ways to enhance the quality, utility and clarity of the information collected; and (4) there are ways to minimize reporting burden, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted by April 30, 2012.

ADDRESSES: You may submit comments identified by DOT Docket ID Number RITA 2008–0002 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.

Fax: 202–366–3640.

Instructions: Identify docket number, BTS 2008–0002, at the beginning of your comments, and send two copies. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard. Internet users may access all comments received by DOT at *http://www.regulations.gov.* All comments are posted electronically without charge or edits, including any personal information provided.

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 (65 FR 19477–78) or you may visit *http://DocketInfo.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.

Electronic Access: An electronic copy of this rule, a copy of the notice of proposed rulemaking, and copies of the comments may be downloaded at *http://www.regulations.gov,* by searching docket RITA 2008–0002.

FOR FURTHER INFORMATION CONTACT: *jeff.gorham@dot.gov,* Office of Airline Information, RTS–42, Bureau of Transportation Statistics, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0039.

Title: Reporting Required for International Civil Aviation Organization (ICAO).

Form No.: BTS Form EF.

Type Of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 40.

Number of Responses: 40.

Total Annual Burden: 26 hours.

Needs and Uses: As a party to the Convention on International Civil Aviation (Treaty), the United States is obligated to provide ICAO with financial and statistical data on operations of U.S. carriers. Over 99% of the data filled with ICAO is extracted from the air carriers' Form 41 submissions to BTS. BTS Form EF is the means by which BTS supplies the remaining 1% of the air carrier data to ICAO.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC, on February 22, 2012.

Patricia Hu,

Director, Bureau of Transportation Statistics, Research and Innovative Technology Administration, Research and Innovative Technology Administration.

[FR Doc. 2012–4813 Filed 2–28–12; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

[Docket: RITA 2008–0002]

Agency Information Collection; Activity Under OMB Review: Submission of Audit Reports—Part 248

AGENCY: Research and Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of BTS requiring U.S. large certificated air carriers to submit two true and complete copies of its annual audit that is made by an independent public accountant. If a carrier does not have an annual audit, the carrier must file a statement that no audit has been performed. Comments are requested concerning whether (1) the audit reports are needed by BTS and DOT; (2) BTS accurately estimated the reporting burden; (3) there are other ways to enhance the quality, utility and clarity of the information collected; and (4) there are ways to minimize reporting burden, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted by April 30, 2012.

ADDRESSES: You may submit comments identified by DOT Docket ID Number RITA 2008–0002 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.

Fax: 202–366–3640.

Instructions: Identify docket number, BTS 2008–0002, at the beginning of your comments, and send two copies. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard. Internet users may access all comments received by DOT at *http://www.regulations.gov.* All comments are posted electronically without charge or edits, including any personal information provided.

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 (65 FR 19477–78) or you may visit *http://DocketInfo.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.

Electronic Access

You may access comments received for this notice at *http://www.regulations.gov*, by searching docket RITA 2008–0002.

FOR FURTHER INFORMATION CONTACT: *Jeff.gorham@dot.gov,* Office of Airline Information, RTS–42, Bureau of Transportation Statistics, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: *OMB Approval No.* 2138–0004

Title: Submission of Audit Reports—Part 248.

Form No.: None.

Type of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 72.

Number of Responses: 72.

Total Annual Burden: 20 hours.

Needs and Uses: BTS collects independent audited financial reports from U.S. certificated air carriers. Carriers not having an annual audit must file a statement that no such audit has been performed. In lieu of the audit report, BTS will accept the annual report submitted to the stockholders. The audited reports are needed by the Department of Transportation as (1) a means to monitor an air carrier's continuing fitness to operate, (2)

reference material used by analysts in examining foreign route cases (3) reference material used by analyst in examining proposed mergers, acquisitions and consolidations, (4) a means whereby BTS sends a copy of the report to the International Civil Aviation Organization (ICAO) in fulfillment of a United States treaty obligation, and (5) corroboration of a carrier's Form 41 filings.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC, on February 22, 2012.

Patricia Hu,

Director, Bureau of Transportation Statistics, Research and Innovative Technology Administration.

[FR Doc. 2012–4812 Filed 2–28–12; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35591]

Georgia Department of Transportation—Acquisition Exemption—CSX Transportation, Inc.

Georgia Department of Transportation (GDOT) [1] has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from CSX Transportation, Inc. (CSXT), a line of railroad known as the West End Segment of the L&N Belt between milepost 469.15 and milepost 472.27, a distance of 3.12 miles, in the City of Atlanta, Fulton County, Ga. On February 17, 2012, GDOT filed a supplement to its verified notice of exemption.

GDOT states that CSXT transferred the subject line to GDOT in a quitclaim deed dated December 7, 2001 and that GDOT acquired the line to preserve it for future transportation uses. GDOT now seeks Board authorization for the transaction GDOT consummated 10 years ago without having sought the requisite regulatory authority at the time. GDOT states that its failure to submit any notice, petition for exemption, or application for acquisition at the time of transaction was an oversight on the part of the parties to the transaction.

GDOT certifies that its annual revenues as a result of this transaction will not result in GDOT's becoming a Class I or Class II rail carrier.

The exemption will become effective on March 18, 2012 (30 days after the verified notice was filed).[2]

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than March 9, 2012 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35591, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Charles A. Spitulnik, Kaplan Kirsch & Rockwell, 1001 Connecticut Avenue NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: February 24, 2012.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–4842 Filed 2–28–12; 8:45 am]

BILLING CODE 4915–01–P

[1] GDOT is department of the State of Georgia organized under Title 32, Chapter 2, of the Official Code of Georgia.

[2] GDOT's verified notice of exemption is deemed to have been filed on February 17, 2012, the date GDOT filed its supplement.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35596]

JP Rail, Inc. d/b/a Southern Railroad Company of New Jersey—Operation Exemption—Rail Line in Salem County, N.J.

JP Rail, Inc. d/b/a Southern Railroad Company of New Jersey (JP Rail), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to operate approximately 18.6 miles of rail line known as the Salem Branch Line (the Line), which is owned by Salem County, N.J. (Salem), as follows: (1) Between the connection with Consolidated Rail Corporation at approximately milepost 11.0 in Swedesboro, N.J., and approximately milepost 28.4 at Salem, and (2) the Glass House Spur, between mileposts 0.0 and 1.2 in Salem.[1]

JP Rail certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and further certifies that its projected annual revenues will not exceed $5 million.

The earliest this transaction may be consummated is March 14, 2012, the effective date of the exemption (30 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than March 7, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35596, must be filed with the Surface Transportation Board, 395 E Street SW.,

[1] JP Rail acquired authority to operate the Line in 1995. *See JP Rail, Inc. d/b/a Southern R.R. Co. of N.J.—Notice of Exemption—Operation of Salem Branch Rail Line in Salem County, N.J.,* FD 32700 (ICC served Oct. 10, 1995). JP Rail states that in July 2003 it entered into a 10-year contract with Salem for the continued operation of the Line, and that it assigned its rights and obligations under that contract to Class III rail carrier U.S. Rail Corporation (U.S. Rail) with Salem's consent in October 2009. *See U.S. Rail Corp. of N.J. —Lease Exemption—County of Salem, N.J.,* FD 35310 (STB served Nov. 27, 2009) and *U.S. Rail Corp.—Operation Exemption—U.S. Rail Corp. of N.J.,* FD 35317 (STB served Nov. 27, 2009). According to JP Rail, Salem terminated its contractual relationship with U.S. Rail on January 10, 2012, and reassigned the contract to JP Rail on February 1, 2012.

In the verified notice, JP Rail requests that rail service be permitted to resume as soon as possible because there are shippers on the Line that require rail service. On February 21, 2012, JP Rail filed a petition for waiver of the 30-day period before an exemption can become effective, 49 CFR 1150.42(b), and requested that the notice of exemption be permitted to become effective within 10 days of its February 13, 2012 filing date.

While JP Rail may have assigned its rights and obligations under the 2003 contract to U.S. Rail, the record does not show that JP Rail has ever sought Board authority to discontinue operations over the Line. Similarly, U.S. Rail has not sought Board authority to discontinue operations over the Line. Thus, with two rail carriers currently authorized to provide rail service on the Line, there is no need to rule on JP Rail's waiver petition. This notice of exemption is being issued and published to clarify the status of the parties with respect to the Line and to remove any doubt about JP Rail's authority to operate the Line in the future.

Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John K. Fiorilla, 8000 Midlantic Drive, Suite 300S, Mount Laurel, NJ 08054.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: February 24, 2012.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–4843 Filed 2–28–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection and Reporting Activities; Electronic Filing of Bank Secrecy Act (BSA) Reports; Final Notice

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final notice.

SUMMARY: FinCEN is adopting a requirement that all financial institutions subject to Bank Secrecy Act (BSA) reporting use electronic filing for certain reports beginning no later than July 1, 2012. FinCEN will consider limited hardship exemptions in certain circumstances.

DATES: Effective date is July 1, 2012.

Inspection of comments received. If a financial institution wishes to review comments received in response to the September 16, 2011, **Federal Register** notice they may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (not a toll free call). Comments received in response to the above notice are not open for further comment. Electronic copies of the received comments may be reviewed at: *http://www.fincen.gov/statutes_regs/bsa/bsa_data_field_comment_20111118.html.*

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Helpline at 800–949–2732, select option 7.

SUPPLEMENTARY INFORMATION:

Title: Bank Secrecy Act Reporting, (31 CFR chapter X).

Abstract: The statute generally referred to as the ''Bank Secrecy Act,'' Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury (Secretary), *inter alia,* to require financial institutions to file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs.[1] Regulations implementing Title II of the BSA appear at 31 CFR chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

The Secretary was granted authority with the enactment of Title 31 U.S.C., to require financial institutions and other persons to file various BSA reports. The information collected on the reports is required to be provided pursuant to Title 31 U.S.C., as implemented by FinCEN regulations found throughout 31 CFR chapter X. The information collected pursuant to this authority is made available to appropriate agencies and organizations as disclosed in FinCEN's Privacy Act System of Records Notice.[2]

Current Action: In support of Treasury's paperless initiative and efforts to make government operations more efficient, FinCEN has chosen to mandate electronic filing of certain BSA reports effective July 1, 2012.

This requirement will significantly enhance the quality of FinCEN's electronic data, improve its analytic capabilities in supporting law enforcement requirements, and result in a significant reduction in real costs to the U.S. government and ultimately to U.S. taxpayers. Specifically, this action makes mandatory the electronic submission of all BSA reports *excluding* the Report of International Transportation of Currency or Monetary Instrument Report (CMIR).[3] Further, the Report of Cash Payments Over $10,000 Received in a Trade or Business (Form 8300) may be filed electronically, but because of statutory restrictions that may pertain to this report, which is required under both FinCEN and IRS regulations,[4] electronic filing of Form 8300 will not be mandatory.

Background: Since October 2002, FinCEN has provided financial institutions with the capability of electronically filing BSA reports through its system called BSA E-Filing. Effective August 2011, the system was expanded to support individuals filing the Report of Foreign Bank and Financial Accounts (FBAR) report. BSA E-Filing is a secure, web-based electronic filing system. It is a flexible solution for financial institutions or individuals, whether they file one BSA report or thousands. BSA E-Filing is a service that filers can access by using their existing Internet connections regardless of connection speed. In addition, it is designed to minimize filing errors and provide enhanced feedback to filing institutions or individuals, thereby providing a significant improvement in data quality.

BSA E-Filing, which is provided free of charge, offers streamlined BSA information submission; faster routing of information to law enforcement; greater data security and privacy compared with paper forms; long-term cost savings to institutions, individuals, and the government; and ensures compatibility with future versions of BSA reports.

In addition, BSA E-Filing offers the following features not available to paper filers:

- Electronic notification of submissions, receipt of submission, and errors, warnings, and alerts;
- Batch validation;
- Acknowledgement that a batch-filed currency transaction report (CTR) and/or suspicious activity report (SAR) was received;
- Feedback reports to filers;
- Faster acknowledgement to money services businesses of receipt of their registration;
- Ability to send and receive secure messages;
- Use of Adobe forms that allows users to create templates, reducing data entry but still providing for printing paper copies if the filer wants a paper copy for its internal review and approval processes;
- Ability for supervisory users to assign system roles to their staff; and
- Access to training materials.

In 2010, FinCEN initiated a complete redesign and rebuilding of a new

[1] Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the USA PATRIOT Act), Public Law 107–56.

[2] FinCEN completed its triennial review of its System of Records Notices. Updated Notices will be published in the **Federal Register** pending the completion of the required comment period.

[3] All CMIRs are filed with the Department of Homeland Security's Customs and Border Protection (CBP) at the port of entry/exit or mailed to the Commissioner of Customs in Washington, DC. There are no electronic filing capabilities at the ports. A CBP contractor keys the data on the completed form into a data tape that is electronically uploaded to the BSA database. FinCEN receives no paper filed CMIRs.

[4] *See* 26 U.S.C. 6011(e)(2); *see also* 26 CFR 1.6050I–1(e)(3)(i) and 31 CFR 1010.330(e)(1).

system-of-record database that significantly enhanced FinCEN's technical capabilities to receive, process, share, and store BSA data. A significant part of this upgrade was the implementation of state-of-the-art electronic reporting or information collection tools. As of December 31, 2011, over 86% of BSA reports are filed electronically with FinCEN.[5]

As a result of the 2010 initiative, FinCEN is in the process of fielding a new BSA Collection, Processing, and Analytic system. The new system, which includes significant e-filing improvements, is designed to support the most efficient state-of-the-art electronic filing. The database will accept Extensible Markup Language (XML) based dynamic reports as well as certain other file formats. The XML Schema, and the American Standard Code for Information Interchange (ASCII) file formats are available,[6] and the electronic file specifications were provided to filers September 8, 2011.

All filings (batch, computer-to-computer, and discrete) will be initiated through the BSA E-Filing System[7] using updated registration and log-in procedures that correct several identified limitations noted in the comments received on the September 16, 2011 Notice.[8] Although batch and computer-to-computer filing processes will remain unchanged, the file format was changed to match the database. Batch and computer-to-computer filers will file reports based on the electronic file specification that was provided in September 2011. A discrete filing (the replacement for submitting a single paper report) is based on Adobe *LiveCycle Designer ES* dynamic forms. The discrete function is available for all filers but is designed especially for small business report filers (as well as individuals). The discrete filing function will be accessed by logging into the BSA E-Filing System and entering a pre-approved user ID and password. During log-in to the discrete filing option, filers will be prompted through a series of questions.[9]

Today's notice requiring filers to submit certain BSA reports electronically using the free FinCEN BSA E-Filing System will provide a range of benefits. Electronic filing will facilitate the rapid dissemination of financial and suspicious activity information in connection with BSA filings, making information contained in these filings more readily available to—and more easily searchable by—law enforcement, the financial regulatory community, and other users of BSA data. Additionally, the requirement that certain BSA reports be filed electronically will result in a significant reduction in the use of paper, producing a positive environmental impact. Further, the implementation of the requirement to file electronically has the potential to save the government a few million dollars per year through the reduction of expenditures associated with current paper processing, in particular the physical intake and sorting of incoming reports, and the electronic keying of reported information into the database.

Security: Mandatory electronic filing will provide increased security not available with paper filings. At the present time, all paper reports are mailed to the IRS Enterprise Computing Center—Detroit (ECC–D) in Detroit, Michigan, as unclassified mail with no special handling via the U.S. Postal Service system. On occasion, mailed paper reports have been delayed, and in some cases damaged beyond readability. A financial institution may not discover that a report could not be processed by ECC–D until many months after the report was due.[10] The BSA E-Filing System is a secure 128-bit single socket layer (SSL) protected Web-based filing system. Reports received are acknowledged and any noted errors are reported back to the filer. This process provides the filer with a record that the required filing was received, as well as suggestions on how to improve the quality of their future reports. Reports originated by the filer are posted securely and directly to the database, thereby significantly reducing or eliminating the possibility of data compromise.

Filer Impact Assessment: On September 16, 2011,[11] FinCEN published a notice proposing that BSA reports be filed electronically through the BSA E-File System by June 30, 2012, effective July 1, 2012. In response to the request for comments, FinCEN received 27 responses. In general, the comments supported the requirement but noted areas requiring further clarification from FinCEN. A significant number of financial institutions anticipated encountering problems in meeting the June date for both e-filing and incorporating the new FinCEN CTR and SAR formats. In response, FinCEN published a notice extending the deadline to implement the new reports until March 31, 2013, (see *http://www.fincen.gov/whatsnew/pdf/20111220.pdf*) but retained the July 1, 2012, target date for electronic filing. As noted in several comments, FinCEN recognizes that mandating electronic filing may pose a challenge for some financial institutions. As reflected in the notice referenced above, for those financial institutions unable to meet the proposed electronic filing target date, FinCEN will consider, based upon certain very limited hardship exceptions, specific requests to extend the time to electronically file the most current paper forms for up to a year past the mandatory electronic filing date. Information on how financial institutions can make such requests is provided in a separate notice.[12] In addition, FinCEN will work with appropriate industry regulators to minimize the impact of this change, while moving forward with the electronic filing requirement.

Several commenters noted a time-to-file change in the CTR electronic filing specification for the FinCEN CTR from the current 25 days to 15 days.[13] FinCEN has consistently maintained a regulatory requirement that CTRs be filed within 15 days.[14] Notwithstanding this requirement, in connection with its receipt of magnetic media files initiated in late 1987, and ending in December 2008, FinCEN issued specifications referencing a 25-day period to assist institutions seeking to take advantage of this filing method via a common business practice of submitting magnetic media files on a fixed schedule. The 25-day period was implemented to account for physically transporting (shipping) the magnetic media to the ECC–D in Detroit, Michigan. FinCEN understands that this business practice has continued with respect to batch e-filing, particularly in light of public FinCEN guidance referencing the 25-day period.[15] In light of the comments received and acknowledging that some financial

[5] As of December 2011, there are over 14,500 registered E-Filing System users.

[6] Copies of the XML and ACSII file formats may be obtained by contacting the BSA E-Filing Help Desk at 1–866–346–9478 (option 1) or via email at *BSAEFilingHelp@fincen.gov.*

[7] More information on filing methods via FinCEN's free Web-based service may be accessed at *http://bsaefiling.fincen.treas.gov/main.html.*

[8] *See* 76 FR 57799.

[9] A series of predetermined questions was designed to establish the type of institution and filing in much the same manner as used in widely accepted income tax filing software.

[10] A delayed or damaged report becomes more critical if it was reporting suspicious activity—especially when relating to terrorist financing.

[11] *See* 76 FR 57799, September 16, 2011.

[12] *See http://www.fincen.gov/whatsnew/html/20120221.html.*

[13] The FinCEN CTR filing specifications may be viewed at *http://bsaefiling.fincen.treas.gov/news/FinCENCTREletronicFilingRequirements.pdf. See* Appendix D page 49.

[14] *See* 31 CFR 1010.306(a)(1).

[15] *http://bsaefiling.fincen.treas.gov/FAQs.html.*

institutions may need to change their business processes to become compliant with the rules, FinCEN has determined that it will temporarily maintain the 25-day compliance period referenced in its earlier specifications until March 31, 2013. This temporary extension to the filing requirements should allow sufficient time for filers to adjust submission schedules to meet established regulatory requirements.

A few commenters noted specific E-File System/Site technical concerns, such as difficulty with password management or field lengths. Several of the issues noted in these comments will be addressed by planned system enhancements, and others are being evaluated. Several commenters pointed out that their institutions filed very few BSA reports a year and noted that filing paper reports was their preferred method. In response, FinCEN would note that the discrete option of the BSA E-Filing System was specifically designed to accommodate the small volume filers. One commenter requested that FinCEN permit firms to file BSA reports in a hardcopy format as a contingency alternative if material issues arise with their respective e-filing systems or FinCEN's database, which would prevent firms from, among other things, batch filing their reports. As a response, FinCEN would note that it has Continuity of Operations Plans (COOP) and E-filing System back-up contingency plans in place to address such issues should they occur. Additionally, the BSA E-Filing helpdesk is available to assist BSA filers as necessary if technical problems are encountered. Finally, one commenter elected to direct comments to two earlier notices,[16] which did not address mandatory electronic filing.

Industry Impact Assessment:

a. *Depository institutions:* Based on responses and updated information, FinCEN believes this change in filing procedures will have some impact on small institutions, but that the overall impact on this group of filers will be minimal. Most depository institutions are currently required to file quarterly call or thrift financial reports with their regulator electronically[17] through a Web-based portal provided by the appropriate federal regulator. This same electronic connectivity may be used to file BSA reports with FinCEN by logging in to the BSA E-Filing System Web-based portal. As noted above for those financial institutions unable to meet the proposed electronic filing deadline, FinCEN will consider, based upon certain very limited hardship exceptions, specific requests to file the most current paper forms for up to one year but no later than July 1, 2013.[18]

b. *Broker-Dealers, Futures Commission Merchants (FCMs), Introducing Brokers in Commodities (IB–Cs), and Mutual Funds:* In view of the comments received and the notice extending the deadline to implement the new reports until March 31, 2013, this change in filing procedures should have minimal impact on these filing institutions. This group is highly automated and enjoys robust electronic buying and selling systems with sophisticated processing and reporting systems.[19] Currently the Securities and Exchange Commission (SEC) mandates electronic filing,[20] as does the Commodity Futures Trading Commission (CFTC).[21]

c. *Insurance companies:* FinCEN received no comments from this financial sector. In view of this, and an understanding that institutions in this financial sector are highly automated,[22] FinCEN believes that this change in filing procedures will have minimal impact on these institutions.

d. *Casinos and Card Clubs:*[23] FinCEN received no comments from this financial sector. In view of this, and an understanding that institutions in this financial sector are highly automated, FinCEN continues to believe this change in filing procedures will have minimal impact on these institutions.

e. *Money Services Businesses (MSBs):* FinCEN received comments from two commenters. Both were supportive of moving to electronic filing but noted timing and technical issues that mirrored other commenters. The relief provided by delaying the implementation date of the FinCEN CTR and SAR to March 2013 addresses their primary concern. Information in trade journals and other publications, along with informal comments from the Internal Revenue Service's Small Business/Self Employed group, indicate that most filers have Internet connectivity. They routinely place orders for goods and services through the Internet and access bill paying services electronically. Information gained from a review of MSB filings of the CTR, SAR, and Registration of Money Services Business (RMSB) forms indicates that this group will be most impacted in the form of training needed to use the electronic E-Filing System. One large MSB acknowledges the significant benefits of mandatory E-Filing. However, they note that the elimination of paper filing will significantly impact 25% to 30% of their small delegate population, and they strongly suggest that some form of paper filing remain acceptable for at least six months beyond the effective date of July 1, 2012, or for a minimum of one year from publication of the final rule. To lessen any impact, FinCEN will provide for hardship exceptions in case unforeseen situations arise and will be providing information on how to make requests for limited hardship exceptions in a separate notice.[24] Additionally, any impact is expected to be counterbalanced by the benefits of e-filing to the government and ultimately to taxpayers.

f. *Service Providers:* There is a network of third-party service providers with which financial institutions may contract to provide electronic filing services to the BSA E-Filing System. FinCEN believes this group to be highly automated and many are already using the BSA E-Filing System. FinCEN does not anticipate that this requirement will have an impact on this group.

g. *Small businesses:*[25] In support of small businesses, FinCEN's Office of Compliance will provide procedures for

[16] *See* 75 FR 63545, October 15, 2010 and 76 FR 4747, January 26, 2011. Office of Management and Budget (OMB) approvals of the two notices, following FinCEN's solicitation and review of public comments, are as follows: FinCEN's new SAR, *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201104-1506-002,* and FinCEN's new CTR, *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201105-1506-001.* FinCEN announced the availability of technical e-filing specifications for the new SAR and CTR on September 8, 2011, as follows: *http://www.fincen.gov/news_room/nr/html/20110902.html.*

[17] Several commenters advised that approximately 200 very small financial institutions mail their report to their regulator who in turn posts it to the regulator's database.

[18] *See supra* note 12.

[19] Currently both the SEC and the CFTC require electronic reporting, the SEC through the EDGAR system and the CFTC through the NFC Windjammer and Easy File systems.

[20] *See http://www.sec.gov/info/edgar/regoverview.htm.*

[21] For financial institutions subject to CFTC oversight, *see* NFA Electronic Filings at *http://www.nfa.futures.org/NFA-electronic-filings/index.HTML.*

[22] *See* the National Insurance Producer Registry (NIPR) at *http://www.nipr.com/.* NIPR is a unique public-private partnership that supports the work of the states and the National Association of Insurance Commissioners (NAIC) in making the producer-licensing process more cost-effective, streamlined and uniform for the benefit of regulators, the insurance industry and the consumers they protect and serve.

[23] Casinos and Card Clubs with gross annual gaming revenues in excess of $1 million (*see* 31 CFR 1010.100(t)(5)(ii) and (6)(ii)).

[24] *See supra* note 12.

[25] *See* the Small Business Administration's (SBA) Web site *http://www.sba.gov/content/what-sbas-definition-small-business-concern* for SBA's definition of a small business concern.

filers to request a temporary limited hardship exemption from mandatory E-Filing. A small business may request, and may be granted an emergency extension by FinCEN based upon certain very limited hardship exemptions.[26]

h. *Individual filers:* Effective August 2011, FinCEN expanded the option to electronically file the Report of Foreign Bank and Financial Accounts (FBAR) to individuals. Individuals worldwide can sign up to file their individual FBARs by accessing the FinCEN E-Filing Web site.[27]

i. *Other Filing Issues:* One commenter noted a potential issue with duplicate filings that are currently required by several States. FinCEN will continue to address the duplicate filing issue with the States involved. FinCEN noted this issue in its SAR Confidentiality notice filing.[28]

j. *Report of Cash Payments Over $10,000 Received in a Trade or Business (Form 8300).* Although FinCEN is making electronic filing of the Report of Cash Payments Over $10,000 Received in a Trade or Business, Form 8300, available to the filing public and will encourage the use of electronic filing as a fast and secure means for filers to meet their obligations, FinCEN is not mandating the E-Filing of this report at this time to remain consistent with statutory restrictions under 26 U.S.C. 6011(e)(2) that may pertain to this report, which is required under both FinCEN and IRS regulations.

Paperwork Reduction Act (PRA)

Type of Review: Review of the final notice to mandate the electronic filing of BSA reports. The burden associated with this notice is reflected below.

Affected Public: Businesses or other for-profit and non-profit institutions.

Frequency: As required.

Estimated Burden: Effective with the FinCEN IT Modernization, there will be seven BSA reports.[29] The burden for electronic filing and recordkeeping of each BSA report is reflected in the OMB approved burden [30] for each of these reports. The non-reporting recordkeeping burden is reflected separately.[31]

Estimated Number of Respondents for all reports = 74,900.[32]

Estimated Total Annual Responses for all reports = 16,172,770.

Estimated Total Annual Burden Hours = 20,874,761.[33]

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained pursuant to the BSA must be retained for five years.

Dated: February 22, 2012.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2012–4756 Filed 2–28–12; 8:45 am]

BILLING CODE 4810–02–P

[26] *Supra* footnote 12.

[27] *See Background section.*

[28] *See* 75 FR 75598, December 3, 2010, footnote 20. Such ''dual filing'' requirements, regardless of whether the State authority examines for compliance with State laws requiring compliance with the BSA, are inherently inconsistent with 31 U.S.C. 5318(g)(4), which clearly intends that all SARs be filed to a single government agency designated by the Secretary of the Treasury.

[29] FinCEN–SAR, FinCEN–CTR, Designation Of Exempt Person, CMIR, RMSB, Foreign Bank Account Report, and the Report of Cash Payments Over $10,000 Received in a Trade or Business (Form 8300).

[30] *See* OMB control numbers 1506–0065, 1506–0064, 1506–0009, 1506–0013, 1506–0014, 1506–0018.

[31] *See* OMB control numbers 1506–0051 through 1506–0059.

[32] All filers subject to BSA reporting requirements excluding CMIR, *see supra* note 3.

[33] Includes all reporting and recordkeeping burden associated with filing BSA reports.

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of 3 Individuals Pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism''

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of 3 individuals whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

DATES: The designations by the Director of OFAC of the 3 individual(s) and 0 entity(-ies) in this notice, pursuant to Executive Order 13224, are effective on February 23, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001 terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary

of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On February 23, 2012 the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, 3 individuals whose property and interests in property are blocked pursuant to Executive Order 13224.

The listings for these individuals on OFAC's list of Specially Designated Nationals and Blocked Persons appear as follows:

Individuals

1. ACHWAN, Mochammad (a.k.a. ACHWAN, Muhammad; a.k.a. ACHWAN, Mochtar; a.k.a. ACHWAN, Mochdar; a.k.a. AKHWAN, Muhammad; a.k.a. AKHWAN, Mochtar; a.k.a. AKWAN, Mochtar), Jalan Ir. H. Juanda 8/10, RT/RW 002/001, Jodipan, Blimbing, Malang, Indonesia; DOB 4 May 1948; alt. DOB 4 May 1946; POB Tulungagung, Indonesia; nationality Indonesia; National ID No. 3573010405480001 (Indonesia) (individual) [SDGT].
2. BA'ASYIR, Abdul Rosyid Ridho (a.k.a. BA'ASYIR, Rosyid Ridho; a.k.a. BA'ASYIR, Rasyid Ridho; a.k.a. BA'ASYIR, Rashid Rida; a.k.a. BASHIR, Abdul Rosyid Ridho; a.k.a. BASHIR, Rosyid Ridho; a.k.a. BASHIR, Rasyid Ridho; a.k.a. BASHIR, Rashid Rida), Pondok Pesantren Al Wayain Ngrandu, Sumber Agung, Magetan, East Java, Indonesia; DOB 31 Jan 1974; POB Sukoharjo, Indonesia; nationality Indonesia; National ID No. 1127083101740003 (Indonesia) (individual) [SDGT].
3. BIN MUHADJIR, Son Hadi (a.k.a. BIN MUHADJR, Son Hadi; a.k.a. BIN MUJAHIR, Son Hadi; a.k.a. MUHADJIR, Son bn Hadi), Jalan Raya Gongdanglegi, RT/RW 1/13, Cangkring Malang, Beji, Pasuran 67154, Indonesia; DOB 12 May 1971; POB Pasuran, East Java, Indonesia; nationality Indonesia; National ID No. 3514131205710004 (Indonesia); Passport R057803 (Indonesia) (individual) [SDGT].

Dated: February 23, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–4720 Filed 2–28–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning applicable conventions under the accelerated cost recovery system.

DATES: Written comments should be received on or before April 30, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, (202) 622–6665, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins.gov.*

SUPPLEMENTARY INFORMATION:

Title: Applicable Conventions Under the Accelerated Cost Recovery System.

OMB Number: 1545–1146.

Regulation Project Number: PS–54–89 Final.

Abstract: The regulations describe the time and manner of making the notation required to be made on Form 4562, under certain circumstances when the taxpayer transfers property in certain non-recognition transactions. The information is necessary to monitor compliance with section 168 of the Internal Revenue Code.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and farms.

Estimated Number of Respondents: 700.

Estimated Time per Respondent: 6 min.

Estimated Total Annual Burden Hours: 70 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 22, 2012.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–4739 Filed 2–28–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee February 28, 2012, Public Meeting

ACTION: Notification of Citizens Coinage Advisory Committee February 28, 2012, Public Meeting.

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for February 28, 2012.

Date: February 28, 2012.

Time: 9 a.m. to 5 p.m.

Location: Conference Room A, United States Mint, 801 9th Street NW., Washington, DC 20220.

Subject: Review and consideration of reverse candidate designs for the 2013 America the Beautiful Quarters® Program Coins honoring Fort McHenry (Maryland) and Perry's Victory and International Peace Memorial (Ohio); candidate designs for the Dr. Muhammad Yunus Congressional Gold Medal, the Montford Point Marines Congressional Gold Medal, and the first eight Code Talkers Recognition Congressional Gold Medals; and reverse design research backgrounder for the 2013 First Spouse Gold Coin and Medal Program.

Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Andy Fishburn, United States Mint Liaison to the CCAC; 801 9th Street NW., Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6525.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: February 23, 2012.

Richard A. Peterson,

Deputy Director, United States Mint.

[FR Doc. 2012–4821 Filed 2–28–12; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 77 Wednesday,

No. 40 February 29, 2012

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61, 121, 135, *et al.*

Pilot Certification and Qualification Requirements for Air Carrier Operations; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 121, 135, 141, and 142

[Docket No. FAA–2010–0100; Notice No. 12–01]

RIN 2120–AJ67

Pilot Certification and Qualification Requirements for Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action would create new certification requirements for pilots in air carrier operations. The proposal would require a second in command (first officer) in part 121 operations to hold an airline transport pilot (ATP) certificate and a type rating for the aircraft to be flown. The FAA proposes to allow pilots with an aviation degree or military pilot experience to obtain an ATP certificate with restricted privileges with fewer than 1,500 hours total time as a pilot. The proposal also would require at least 1,000 flight hours in air carrier operations in order to serve as a pilot in command in part 121 air carrier operations. Finally, the FAA is proposing to modify an ATP certificate with an airplane category multiengine class rating or type rating to require 50 hours of multiengine flight experience and completion of a new FAA-approved ATP Certification Training Program for a Multiengine Class Rating or Type Rating that would include academic training and training in a flight simulation training device. These proposed requirements would ensure that pilots have proper qualifications and experience in difficult operational conditions and in a multicrew environment prior to serving as pilot flightcrew members in air carrier operations.

DATES: Send your comments on or before April 30, 2012.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0100 using any of the following methods:

- *Federal Rulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov*.

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the docket, or, the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this proposed rule contact Barbara Adams, Aircraft Certification Service, AIR–230, Federal Aviation Administration, 950 L'Enfant Plaza SW., Suite 500, Washington, DC 20024; telephone (202) 385–4286; facsimile (202) 385–6475; email *barbara.adams@faa.gov*. For legal questions concerning this proposed rule contact Anne Moore, Office of the Chief Counsel—Regulations Division, AGC–240, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3123; facsimile (202) 267–7971; email *anne.moore@faa.gov*.

SUPPLEMENTARY INFORMATION: Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of related rulemaking documents.

Authority for This Rulemaking

The FAA's authority to issue rules on 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 III, Section 447. Under that section, the FAA is charged with prescribing regulations for the issuance of airman certificates. In addition, the Airline Safety and Federal Aviation Administration Extension Act of 2010 (Pub. L. 111–216) specifically directed the FAA to conduct a rulemaking proceeding to amend 14 CFR part 61 to modify the requirements for issuance of an ATP certificate. This regulation is within the scope of that authority.

List of Abbreviations and Acronyms Frequently Used in This Document

ANPRM—Advance Notice of Proposed Rulemaking
ARC—Aviation Rulemaking Committee
ATP—Airline Transport Pilot
FOQ ARC—First Officer Qualifications Aviation Rulemaking Committee
FSTD—Flight Simulation Training Device
NPRM—Notice of Proposed Rulemaking
PIC—Pilot in Command (Captain)
SIC—Second in Command (First Officer)

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I. Overview

As discussed in greater detail throughout this document, this rulemaking proposes to modify the requirements for pilots operating in part 121 air carrier operations. Additionally, it would amend the requirements for all pilots seeking to obtain an airline transport pilot (ATP) certificate with an airplane category multiengine class rating and/or type rating. The new requirements would ensure that all pilots entering an air carrier environment have a background of training and aeronautical experience that would allow them to adapt to a complex, multicrew environment in a variety of operating conditions.

The proposed requirements would most affect any individual seeking an ATP certificate with an airplane category multiengine class rating. The proposed requirements would also affect any person wanting to serve as pilot in command (PIC) in part 121 air carrier operations as well as an individual wishing to serve as PIC in part 91 subpart K operations or part 135 operations as defined by § 91.1053(a)(2)(i) or § 135.243(a)(1). In addition, persons wanting to serve as second in command (SIC) in part 121 air carrier operations would be affected by the proposed rules. Any certificate holders approved under part 121, 135, 141, or 142 would be affected by the proposed rule if they choose to offer the proposed ATP Certification Training Program.

A general summary of current versus proposed pilot certification requirements is included in the following table.

Scenario	Current regulations	Proposed regulations
Receive an ATP certificate with airplane category and multiengine class rating.	Be at least 23 years old, hold a commercial pilot certificate with instrument rating, pass a knowledge test and practical test, and have at least 1,500 hours total time as a pilot.	Meet all of the requirements in the current regulations, successfully complete a new ATP Certification Training Program before taking the ATP knowledge test, and have a minimum of 50 hours in class of airplane.
Receive an ATP certificate with restricted privileges (multiengine class rating only).	None	Be at least 21 years old, hold a commercial pilot certificate with instrument rating, successfully complete a new ATP Certification Training Program, pass ATP knowledge and practical tests, and for military pilots, have a minimum of 750 hours total time as a pilot, or for a graduate of an aviation degree program, have a minimum of 1,000 hours total time as a pilot.
Serve as a second in command (first officer) in part 121 air carrier operations.	Hold a commercial pilot certificate with appropriate category and class ratings and an instrument rating.	Hold an ATP certificate with appropriate aircraft type rating OR Hold an ATP certificate with restricted privileges and an appropriate aircraft type rating.
Serve as pilot in command (captain) in part 121 air carrier operations.	Hold an ATP certificate with appropriate aircraft type rating and have at least 1,500 hours of total time as a pilot.	Meet all of the requirements in the current regulations and have a minimum of 1,000 flight hours in air carrier operations (as an SIC in part 121 operations, a PIC in operations under either § 135.243(a)(1) or § 91.1053(a)(2)(i), or any combination thereof).

The FAA began considering changes to the certification requirements for SICs in part 121 operations in early 2010, when it published an advance notice of proposed rulemaking (ANPRM) entitled ''New Pilot Certification Requirements for Air Carrier Operations.'' (75 FR 6164, February 8, 2010). The ANPRM sought input on current part 121 pilot eligibility, training, and qualification requirements for SICs. The FAA received nearly 1,300 comments to the ANPRM, including comments from airlines, associations, universities, and individual pilots. Most agreed that the FAA should strengthen part 121 SIC certification requirements, although they recommended various methods for improvement.

In order to help develop potential changes to part 121 SIC certification requirements, the FAA chartered an aviation rulemaking committee (ARC) in July 2010. The ARC, comprised of a cross section of the aviation industry, recommended new minimum certification levels and aeronautical experience requirements for SICs, as well as additional flight and ground training requirements. Additionally, the ARC developed a method for crediting various types of academic training and flight experience towards the minimum required flight hours for SICs. Before the ARC could submit its final recommendations, President Obama signed the Airline Safety and Federal Aviation Administration Extension Act of 2010 (Pub. L. 111–216) (the ''Act''), which included several specific provisions related to modifying the ATP certification requirements to prepare pilots to operate more safely in air carrier operations. The FAA asked the ARC to consider the provisions of sections 216 and 217 of the Act in developing its final recommendations.

The current proposals in this NPRM are consistent with the statutory mandates set forth in the Act.

Public Law 111–216 Sections 216 & 217	NPRM
1. All part 121 flightcrew members must hold an ATP by August 2, 2013. (216)	An SIC in part 121 must have one of the following: • ATP certificate. • Restricted Privileges ATP certificate.
2. To be qualified to receive an ATP, an individual shall have sufficient flight hours, as determined by the Administrator, to enable a pilot to function effectively in an air carrier operational environment; and have received flight training, academic training, or operational experience * * * to function effectively in an air carrier operational environment. (217). Minimum number of flight hours shall be at least 1,500 flight hours. (217) A pilot need not fully comply with the flight hours requirement above provided specific academic training courses, beyond those listed below, as determined by the Administrator. (217)	Restricted Privileges ATP certificate.

Public Law 111–216 Sections 216 & 217	NPRM
3. All part 121 flightcrew members must have an appropriate amount of multi-engine flight experience, as determined by the Administrator. (216).	50 hours of aeronautical experience in class of airplane required for an ATP. Aircraft type rating for part 121 SICs. 1,000-hour minimum air carrier experience so serve as a PIC in part 121 operations.
4. To be qualified to receive an ATP an individual shall have received flight training, academic training, or operational experience that will prepare a pilot to:. a. function in a multipilot environment; b. function in adverse weather conditions (icing); c. function during high altitude operations; d. to adhere to the highest professional standards; and e. function in an air carrier operational environment. (217) The total flight hours should include sufficient flight hours in difficult operational conditions. (217)	ATP Certification Training Course.
5. To be qualified to receive an ATP, an individual shall have sufficient flight hours, as determined by the Administrator, to enable a pilot to function effectively in an air carrier operational environment. (217).	1,000-hour minimum air carrier experience to serve as a PIC in part 121 operations.
6. Prospective flightcrew members must undergo comprehensive pre-employment screening, including an assessment of the skills, aptitudes, airmanship, and suitability * * * for operating in an air carrier operational environment. (216).	Revised ATP requirements (ATP certification training course, higher total time, and multi-engine time). Aircraft type rating for the aircraft to be flown in part 121 operations (SIC). 1,000-hour minimum air carrier experience so serve as a PIC in part 121 operations.

The FAA also considered the responses to the ANPRM, the ARC recommendations, and National Transportation Safety Board (NTSB) safety recommendations when developing the NPRM, insofar as the recommendations and comments did not conflict with the Act's requirements. Throughout this document, the FAA invites commenters to address specific questions, along with any other matters they consider relevant. The FAA is particularly interested in receiving recommendations that would provide the same or better level of experience and training for pilots in air carrier operations at lower cost. Any recommendations should take into account the requirements of sections 216 and 217 of the Act. The FAA may incorporate any such recommendations in a final rule in this proceeding.

The FAA estimates that the cost will be minimal for the requirement of 50 hours of multiengine time for the ATP certificate with an airplane category multiengine class rating or type rating. The FAA also estimates as minimal the costs of the requirement that a pilot have 1,000 hours of air carrier operating experience prior to serving as a part 121 PIC.

As discussed in more detail below, on a pre-statute basis, the proposed rule has costs that far exceed its benefits. However, about 75 percent of these costs (about $55 million annualized) are the result of the underlying statutory requirement that all pilots operating under part 121 have an ATP by August 1, 2013. Although the FAA currently requires 1,500 hours for an ATP certificate, the requirement for all part 121 flightcrew members to hold an ATP certificate will take effect whether or not a regulation is issued. If the FAA were not to use its authority to allow credit for academic credit, these projected costs would rise to more than $87 million annualized. Therefore, the costs associated with this provision are attributable to the statute, not this proposed regulation. The rule has been proposed largely to reflect the requirements of the statute. Accordingly, the table below shows the expected costs of the remaining two primary cost drivers of the proposed rule along with the expected benefits.

	Total cost ($ mil)	PV cost ($ mil)	Annualized PV cost ($ mil)
Part 121 ATP Certificate Requirement	$1,575.2	$582.0	$54.9
Type Rating (Part 121 Operators Only)	.....	3.4	0.3
ATP Certification Training Program	443.3	196.9	18.6
Total Social Cost (Pre-statutory baseline)	2,018.5	782.4	73.9
Costs Attributable to Proposed Rule (Post-statutory baseline)	443.3	200.4	18.9
	Total benefits ($ mil)	PV benefits ($ mil)	Annualized PV benefits
Total Social Benefit	$896.0	$384.1	$36.3

Notes:

1. Although a social cost, the cost of the ATP certificate requirement is not a cost attributable to the proposed rule, as the requirement is specifically mandated by the Airline Safety Act of 2010.
2. Although incremental total costs of the type rating are zero, incremental present value costs are positive. See discussion in the Regulatory Notices & Analyses section.
3. The same flight test qualifies a pilot for both the ATP certificate and the type rating. The incremental present value cost of the type rating requirement ($3.4 million) occurs because more current pilots have ATP certificates than type ratings.

4. Owing to a requirement of a preliminary version of this paper, the incremental cost of the type rating requirement includes the cost of the ATP written exam. As this is an extremely small cost, it is not reallocated here to the cost of the ATP certification requirement.
5. Annualized PV Cost/Benefit is the annual cash flow of the 20-year annuity that yields the same present value as the cost/benefit item.
6. Column sums may be off one or more units from totals owing to rounding.

II. Background

A. Statement of the Problem

The 2009 Colgan Air accident outside of Buffalo, New York, focused public and Congressional attention on multiple aspects of current air carrier requirements, including the level of training and experience of pilots in part 121 air carrier operations. The accident raised questions regarding whether SICs should be held to the same training and flight hour requirements as PICs, and whether a pilot's overall academic training and the quality of the flight training were as important as the total number of flight hours. The accident also raised questions regarding pilot professionalism and whether pilots received sufficient experience in a multicrew environment.

In an effort to address these questions, the FAA evaluated recent accidents in parts 121 and 135 to determine whether current certification requirements are sufficient to produce pilots who can enter an air carrier environment and train and perform their duties effectively. The accident reports revealed deficiencies in several areas involving training in aircraft manual handling skills, stall and upset recognition and recovery, high altitude operations, pilot monitoring skills, effective CRM, stabilized approaches, and operations in icing conditions. The six proposals in this NPRM are the result of analysis of the accident reports, recommendations of the First Officer Qualification Aviation Rulemaking Committee (FOQ ARC), and the requirements set forth in Public Law 111–216. The proposals are directed at improving the knowledge and skills of pilots before they serve as a required crewmember in air carrier operations.

B. Current Requirements

Currently, a pilot serving as PIC in part 121 operations must hold an ATP certificate and a type rating for the aircraft flown. Prior to applying for an ATP practical test, a pilot must hold a commercial pilot certificate with an instrument rating, have 1,500 hours total time as a pilot, be 23 years of age, and pass the ATP knowledge test. After a pilot has obtained a commercial pilot certificate, there are no additional ground or flight training requirements prior to applying for an ATP certificate with an airplane category multiengine class rating. In addition, a pilot applying for an ATP certificate with an airplane category multiengine class rating is not required to obtain any additional experience in a multiengine airplane beyond the minimal hours required for a commercial pilot certificate with a multiengine class rating. A pilot who holds an ATP certificate may serve as PIC in part 121 operations with no prior experience in a part 121 air carrier environment.

Current regulations for part 121 air carrier operations require the SIC to hold at least a commercial pilot certificate with appropriate category and class ratings and an instrument rating. To be eligible for a commercial pilot certificate with an airplane category rating, an applicant must be at least 18 years of age and have 250 hours of flight time (less if the certificate is obtained under a part 141 pilot school or a part 142 training center). An applicant for a commercial pilot certificate with an airplane category multiengine class rating could obtain the certificate with minimal hours of flight time in a multiengine airplane. An SIC in part 121 air carrier operations is not currently required to have an aircraft type rating for the aircraft flown in revenue service; however, an SIC may be required to have a pilot type rating under § 61.55 for flag operations.

C. History of the Proposed Rule

1. Advance Notice of Proposed Rulemaking (ANPRM)

On February 8, 2010, the FAA published an advance notice of proposed rulemaking (ANPRM) seeking public input on whether current eligibility, training, and qualification requirements for commercial pilots were adequate (75 FR 6164). In the ANPRM, the Agency asked whether all part 121 pilots should hold an ATP certificate and whether they should have 1,500 flight hours even without holding an ATP certificate. Additionally, the Agency asked if academic training could substitute for required flight hours, and, if so, what types of training and how much credit should a pilot receive for the training. Finally, the Agency asked if there should be specific ground or flight training required of part 121 pilots. The comment period for the ANPRM closed on April 9, 2010. The FAA received comments from nearly 1,300 commenters, including flight schools, flight school associations, pilot associations, major and regional carriers, and individuals.

Before the FAA could issue a notice of proposed rulemaking (NPRM) based on the comments from the ANPRM, Public Law 111–216 was enacted on August 1, 2010. The Act sets forth a number of mandates which preclude several of the options underlying the questions posed in the ANPRM. While the FAA has considered and appreciates all of the comments received in response to the ANPRM, the following discussion of the comments focuses on those areas for which the FAA continues to have discretion. All of the comments are publicly available in the docket.

a. Effect of Aviation Degrees on Pilot Knowledge Base and Credit for Academic Study

The FAA asked whether pilots who graduate from accredited aviation universities have a stronger knowledge base than pilots without an aviation degree. The FAA also asked whether academic study should be credited for a portion of the required number of flight hours and whether only certain types of academic studies should be credited.

With respect to the question of whether academic study leads to a stronger knowledge base, 781 commenters agreed, including Aviation Accreditation Board International (AABI), Air Line Pilots Association (ALPA), Boeing, International Air Transport Association (IATA), Pilot Career Initiative (PCI), Society of Aviation and Flight Educators (SAFE), Cape Air Nantucket Airlines, and the University Aviation Association (UAA). Most supporters credited the structured learning environment of accredited aviation universities as the major factor in providing a strong knowledge base. Additionally, commenters cited a 2010 Pilot Source Study [1] as evidence that graduates from accredited aviation universities perform better in training. Atlantic Southeast Airlines (ASA), General Aviation Manufacturers Association (GAMA), Regional Airline Association (RAA), and Southern Illinois University Carbondale (SIU) stated graduates of aviation universities took courses pertinent to air carrier operations, which better prepared the graduates for working in an air carrier environment. However, a few commenters noted that, while aviation university graduates do have a stronger

[1] A copy of this study is in the docket for this NPRM.

background, that formal education does not guarantee they will perform better than other flightcrew members.

Forty-one commenters did not agree that aviation degrees lead to a stronger knowledge base. Over half of these commenters, including Ameristar Air Cargo and the Coalition of Airline Pilots Associations (CAPA), believed academics cannot substitute for actual flight experience. Other commenters, including Air Transport Association of America (ATA) and CAPA, stated that quality training was also available outside of aviation universities, including the military.

With respect to the question of crediting academic study toward flight time, 761 commenters, including Boeing, PCI, and the University of Alaska Anchorage Aviation Technology Division, supported the idea. Approximately 700 of these commenters, including AABI, ALPA, Continental Airlines, and the Professional Aviation Board of Certification (PABC), believed in crediting only academics from accredited universities. SAFE and UAA supported crediting any academics related to air carrier operations, regardless of where they were obtained. Two commenters proposed allowing credit for courses from 14 CFR part 141 pilot schools and part 142 training centers. The University of Alaska Anchorage Aviation Technology Division, RAA, National Business Aviation Association (NBAA), ATA, and PCI, agreed with crediting academics but suggested the requirements and standards for doing so need to be determined by an ARC or expert panel.

There were 114 commenters opposed to crediting any academic study in lieu of flight time. Most of these commenters, including American Association for Justice, Ameristar Air Cargo, CAPA, IATA, and the National Transportation Safety Board (NTSB), stated academics cannot substitute for actual experience.

The FAA believes structured academic study can provide a solid foundation that is focused and can prepare a pilot for a career at an air carrier. Additionally, section 217 of the Act allows the FAA to credit specific academic training courses towards the total number of required flight hours for an ATP certificate.

b. Minimum Number of Flight Hours With Academic Credit

The FAA asked if pilots who receive credit for academic study should still have a minimum number of flight hours before serving as SIC in part 121 air carrier operations. The FAA offered 750 hours as a possible minimum and sought comment on whether that number was too high, too low, or adequate.

Over 760 commenters favored a minimum hour requirement, although they varied in response to the proposed 750-hour minimum. Approximately 700 of these commenters, including UAA, the University of Alaska Anchorage Aviation Technology Division, and JetBlue Airways, believed 750 hours was too high. Many of those in favor of a lower number of flight hours sited the Pilot Source Study, which claimed pilots with as few as 500 hours performed safely and professionally in part 121 air carrier operations. ALPA, ATA, Calspan Corporation, and SIU stated 750 hours was appropriate, though they offered a variety of conditional reductions for certain qualifications, such as for graduates of aviation colleges or pilots employed by airlines with ''formal AQP-developed ab initio programs.'' Twenty-one commenters, including Ameristar Air Cargo and CAPA, felt 750 hours was too low, indicating that more flight experience leads to better, safer pilots.

Twenty-four commenters were not in favor of any minimum hour requirement. Half of those commenters, including AABI, ASA, Continental Airlines Express, Continental Airlines, and GAMA, stated any minimum requirement would be arbitrary and would not guarantee a higher level of safety. Other commenters stated the FAA should focus on improving overall pilot training rather than hour requirements.

The University of Alaska Anchorage Technical Division, SAFE, and PABC recommended that an ARC or an expert panel should determine if minimum hour requirements were necessary and, if so, what that minimum should be.

The FAA believes actual flight experience is valuable in preparing a pilot to fly in an air carrier environment. The FAA also believes structured academic study can provide a solid foundation that is focused and can prepare a pilot for a career at an air carrier as well. Additionally, section 217 of Public Law 111–216 allows the FAA to credit specific academic training courses to count towards the number of required flight hours for an ATP certificate.

c. Improving Existing Monitoring, Evaluation, Information Collection Requirements, and Enforcement Associated With Pilot Performance

The FAA sought input on whether existing regulations could be amended to improve pilot performance and increase safety. Approximately 60 commenters responded to this question, offering a variety of ways to strengthen existing programs.

Many of the commenters cited the need for greater disclosure of pilot records to facilitate screening of prospective pilots. AABI, Calspan Corporation, Cape Air Nantucket Airlines, PABC, Pilot Career Initiative/ Delta Connection Academy, and SAFE suggested an applicant's examination, accident, and incident record be divulged to the examiner or air carrier when he or she is seeking a new certificate, rating, or employment. Others, including Ameristar Air Cargo and the Liberty University School of Aeronautics, called for greater ability to track pilot performance, so carriers could offer additional training to underperforming pilots and pair them with more skilled pilots in a mentoring situation. The Liberty University School of Aeronautics also proposed requiring more time in aircraft type for new captains. The RAA advocated air carrier access to the FAA database of pilot checkride evaluations and enforcement actions for hiring purposes. Commenters also recommended expanding the use of voluntary reporting systems such as ASAP and FOQA. Proponents of these systems included ALPA, Continental Airlines Express, CAPA, and Continental Airlines.

Additionally, commenters suggested modifying existing certificate requirements. Several commenters stated the current minimum hours for both commercial and ATP certificates do not reflect today's more complex airspace and aircraft and that more hours are needed to ensure a pilot has the necessary skills. Others recommended ''richer'' simulator training sessions that are a closer approximation of actual flying conditions. One commenter stated that, in addition to an ATP certificate, a type rating should be required because a type rating demonstrates a greater knowledge of the specific aircraft being flown. A few commenters suggested less reliance on simulators and more time in an aircraft to teach pilots how to respond better to emergency situations, such as stalls and spins.

The Act addresses many of the areas identified in the comments, including access to pilot records, pilot performance monitoring, safety management systems, and reporting systems. These issues will be the focus of future FAA actions. To the extent that the comments relate to pilot certification requirements, the FAA will consider the comments in light of the

requirements of sections 216 and 217 of the Act.

2. First Officer Qualifications Aviation Rulemaking Committee (FOQ ARC)

In response to the ANPRM, the FAA Administrator chartered the FOQ ARC on July 16, 2010. The ARC was comprised of a cross section of the aviation industry with participation from:

- Air Line Pilots Association, International (ALPA)
- Air Transport Association of America, Inc. (ATA)
- Aircraft Owners and Pilots Association (AOPA)
- Aviation Accreditation Board International (AABI)
- The Coalition of Airline Pilots Associations (CAPA)
- National Air Disaster Alliance/Foundation (NADA/F)
- National Business Aviation Association (NBAA)
- Pilot Career Initiative (PCI)
- Regional Airline Association (RAA)

The FOQ ARC provided a forum for the U.S. aviation community to discuss flight experience and training requirements to fly as a first officer (second in command) in a part 121 air carrier operation. The ARC also evaluated the comments received in response to the ANPRM. Specifically, the ARC considered and addressed:

- What should be the minimum certification level required of a First Officer?
- What should be the minimum flight hour experience requirements of a First Officer?
- Can academic training substitute for hours of experience? If so, what subjects and how much flight experience?
- Should there be an air carrier endorsement on a commercial pilot certificate? If so, what kind of flight and ground training should be required?
- Should there be an operational experience requirement (e.g. high altitude, icing) before being permitted to operate as a First Officer?

As a result of the enactment of Public Law 111–216, the Administrator also asked the FOQ ARC to define the flight hours and/or experience in difficult operating conditions that are necessary to prepare a pilot for part 121 air carrier operations. Based on academic references, review of available data in the subject area, and the FOQ ARC's experience in part 121 operations and training, the FOQ ARC members developed recommendations in these areas.

Although the FAA has considered the FOQ ARC's recommendations in drafting this proposed rule, the Agency retains the authority and obligation to evaluate proposals and independently determine how best to amend existing regulations in accordance with the requirements of the Act. A copy of the FOQ ARC's final report is available for inspection in the docket to this proposed rule.

FOQ ARC Recommendations

Substitution of Academic Training for Flight Experience

One of the most challenging topics the ARC was tasked to evaluate was what, if any, academic training courses or programs could be used to replace actual flight experience. The FOQ ARC developed an academic credit system that assessed the quality of each potential component of typical pilots' education and experience. The ARC's system gives credit for both the pilot's total flight-hour experience and specific academic training. The ARC reasoned that certain types of experience and training were more effective in preparing a pilot to transition to an air carrier environment. Although all members of the ARC agreed education was essential to producing safe and effective crewmembers, two FOQ ARC member organizations filed minority opinions disagreeing with the concept of awarding flight-hour credit for academic training.

The FAA believes that, in certain circumstances, the combination of focused academic training and structured flight training can substitute for actual flight experience. Additionally, the FAA finds value in the concept of awarding credit for flight experience that is more applicable to part 121 operations (e.g. multiengine, multicrew aircraft experience); however, it does not believe the Act permits this sort of credit to reduce the minimum required flight hours for the ATP certificate.

Type Rating for the Aircraft Being Flown for Pilots in Part 121 Air Carrier Operations

The ARC unanimously proposed that all SICs in part 121 air carrier operations have an appropriate type rating for the aircraft to be flown. The ARC believes that training required to obtain a type rating exposes the pilot to an advanced multiengine aircraft and a multicrew environment.

The FAA tentatively agrees that requiring all SICs in part 121 air carrier operations to possess an appropriate type rating for the aircraft to be flown would provide all pilot crewmembers the qualifications necessary to operate in difficult conditions.

50 Hours of Multiengine Experience for an ATP Certificate With a Multiengine Class Rating

The FOQ ARC reviewed the requirements of the Act and recommended 50 hours of multiengine experience as a prerequisite for an applicant for an ATP certificate with a multiengine class rating.

The FAA agrees additional multiengine experience would benefit all pilots who are required to hold an ATP certificate with a multiengine class rating. In addition, this recommendation would further the requirements of section 216 of the Act, which requires the Administrator to determine the appropriate amount of multiengine flight hours.

''Advanced jet training'' for Crewmembers Entering Part 121 Service With a ''SIC Only'' ATP

The FOQ ARC unanimously proposed an ''advanced jet training'' (AJT) course designed to give instruction in air carrier flightcrew operations in a multiengine aircraft, emphasizing the transition of the professionally qualified pilot to a highly skilled member of an air carrier flightcrew. The ARC proposed course topics including crew resource management (CRM), flightcrew training techniques, high speed and high altitude programming of automatic flight control systems, transport aircraft flight techniques, turbojet operations in all flight regimes and in difficult operational conditions, and use of advanced avionics. The FOQ ARC recommended AJT courses be approved by the FAA to ensure a structured quality training experience. The members of the FOQ ARC recommended that the flight training for the proposed course only be accomplished in simulators.

The FAA agrees that there may be value in a foundational course designed to prepare a pilot for the complexities of air carrier operations. The FAA also believes that if this training were required at the ATP certification level it could address the gap in knowledge between the aeronautical knowledge of a commercial pilot and the knowledge a pilot should have prior to entering an air carrier environment. This training course would provide the flight training in difficult operating conditions required by section 217 of the Act.

New ATP Practical and a New ATP Written Exam

The FOQ ARC also identified the aeronautical knowledge and flight proficiencies it believes are essential to part 121 first officer qualifications and

recommended that these areas be appropriately evaluated in the knowledge and practical tests for an ATP certificate.

The FAA tentatively agrees the ATP knowledge test should be revised to incorporate new knowledge areas specific to air carrier operations and difficult operational conditions. The FAA believes that including these new knowledge areas in the ATP knowledge test would respond to the requirements of section 217 of the Act.

Quality Assurance and Oversight

The FOQ ARC believes that its recommendations to the FAA should, if implemented, be examined and analyzed over time to ensure their effectiveness. The FOQ ARC recommended that a data collection process be instituted for continuous feedback on all pilots attaining an ATP certificate at reduced hours.

The FAA agrees data collection is an essential part to any safety management system and continues to evaluate methods to assess pilot performance beyond those already required. The FAA has convened two ARCs to consider pilot mentoring, leadership, and professional development, as well as flightcrew member education, support, and training standards.

Air Carrier Annual Reporting: Flight Hours, Education, Pay and Benefits

The FOQ ARC recommends that, through August 1, 2013, all part 121 air carriers provide an annual report to the FAA showing flight hours, education, and qualifications for each first officer hired during that past year. The ARC's stated purpose of the report would be to show that air carriers are making progress in complying with the provisions of the Act. The qualifications would be disclosed individually and de-identified for each pilot hired. This annual filing report would also include a report on the air carrier's first officer annual pay and benefits. Two ARC member organizations dissented from the recommendation to require air carriers to provide information on pay and benefits.

The FAA has chosen not to adopt this recommendation and is not required to issue regulations on this topic; however, the Agency sees value in ensuring part 121 air carriers are aware of the Act and its requirements as they pertain to pilot flightcrew members. Therefore, the FAA issued Information for Operators (InFO) 10024, Airline Transport Pilot Certificate Requirements for Pilots in Part 121 Operations, on December 15, 2010, which outlined the applicable Act requirements.

3. National Transportation Safety Board (NTSB) Recommendations

Human error has been a major factor in many of the commercial airlines accidents over the past 10 years. This was most recently evidenced in the Colgan Air accident that occurred on February 12, 2009, when the pilot lost control of the aircraft after failing to follow appropriate procedures. The accident resulted in the death of 45 passengers, 2 flight attendants, both pilots, and an individual on the ground. The NTSB's final accident report identified a number of safety issues, including flightcrew member qualifications, failure to adhere to the sterile cockpit rules, and improper handling of the aircraft.

The FAA identified 31 accidents in part 121 air carrier operations and 30 accidents in part 135 air carrier operations from fiscal year 2001 through fiscal year 2010 that could have been mitigated if the proposed enhanced ATP qualification standards and part 121 requirements had been in effect at the time of those accidents. The analysis indicated the accidents were a result of various issues, including improper aircraft handling, poor CRM, poor situational awareness, and inadequate training. These accidents resulted in 107 fatalities, 28 serious injuries, and 44 minor injuries. A detailed description of this analysis, and how it was conducted, is provided in Section E of the initial regulatory evaluation that is available for review in the docket.

The NTSB investigation reports of these accidents revealed, among other issues, inadequacies in the following areas: aircraft handling to include stall and upset recognition and recovery, high altitude training, active pilot monitoring skills, effective CRM, stabilized approaches, operations in icing conditions, and hypoxia training. These accidents resulted in the NTSB issuing several recommendations related to these areas. The changes proposed in the NPRM address, at least in part, the following NTSB recommendations:

- Training of flightcrews to respond to sudden, unusual or unexpected aircraft upsets (Recommendations A–96–120, A–04–62, A–07–3, and A–09–113);
- Develop and conduct stall recovery training and provide stick pusher familiarization training for pilots of stick-pusher equipped aircraft (Recommendations A–10–22 and A–10–23);
- High altitude training (Recommendations A–07–1 and A–07–2);
- Training and guidance for rudder use in transport-category aircraft (Recommendation A–02–2);
- Airport situational awareness (Recommendation A–07–44);
- Stabilized approach concept (Recommendations A–01–69 and A–08–18);
- Landing performance calculations (Recommendations A–07–59 and A–08–41);
- CRM training (Recommendation A–03–52);
- Pilot monitoring duties (Recommendation A–10–10);
- Requirements for flightcrew member academic training regarding leadership and professionalism (Recommendations A–10–15);
- Training in icing conditions (Recommendation A–07–14);
- Hypoxia awareness training (Recommendation A–00–110); and
- Training in crosswinds with gusts (Recommendations A–10–110 and A–10–111).

In the NPRM, the FAA has included a provision that would incorporate the various training areas identified in these NTSB recommendations. The proposed training would include both academic and flight simulation training device (FSTD) training for individuals who apply for an ATP certificate with airplane category multiengine class rating or type rating. The proposed training would have to be completed to become eligible for taking the ATP knowledge test. While these areas may also be addressed in an air carrier's training program, the training proposed in this NPRM would be an ATP certificate requirement aiming to bridge the knowledge and experience gap between a commercial pilot and a professional pilot operating in an air carrier environment.

4. Airline Safety and Federal Aviation Administration Extension Act of 2010 (Pub. L. 111–216)

On August 1, 2010, President Obama signed into law the Airline Safety and Federal Aviation Administration Extension Act of 2010 (Pub. L. 111–216). In addition to extending the FAA's authorization, the Act included provisions to improve airline safety and pilot training. Specifically, section 216, Flight Crewmember Screening and Qualifications, and section 217, Airline Transport Pilot Certification, pertain directly to this rulemaking.

Section 216 requires the FAA to conduct a rulemaking proceeding to require:

- Part 121 air carriers to develop and implement means and methods for

ensuring flightcrew members have proper qualifications and experience;

• All flightcrew members in part 121 air carrier operations to hold an ATP certificate and to have obtained appropriate multiengine flight experience, as determined by the Administrator by August 2, 2013; and

• Prospective flightcrew members to undergo comprehensive pre-employment screening of, including an assessment of the skills, aptitudes, airmanship, and suitability of each applicant for a position as a flightcrew member in terms of functioning effectively in the air carrier's operational environment.

Section 216 requires the FAA to issue an NPRM by January 28, 2011, and a final rule by August 2, 2012. Independent of any rulemaking proceeding by the FAA, this section directs that all flightcrew members in part 121 air carrier operations must hold an ATP certificate, issued under part 61, by August 2, 2013.

Section 217 of the Act requires the FAA to issue a final rule by August 2, 2013, modifying the requirements for an ATP certificate in part 61. The section establishes minimum requirements for an ATP certificate which include:

• Sufficient flight hours, as determined by the Administrator, to enable a pilot to function effectively in an air carrier operational environment;

• Flight training, academic training, or operational experience that will prepare a pilot to function effectively in a multipilot (multicrew) environment, in adverse weather conditions, during high altitude operations, in an air carrier environment, and to adhere to the highest professional standards; and

• Sufficient flight hours, as determined by the Administrator, in difficult operational conditions that may be encountered by an air carrier to enable a pilot to operate safely in such conditions.

The section directs that the minimum total flight hours to be qualified for an ATP certificate shall be at least 1,500 flight hours. Notwithstanding the stated minimum, the section permits the Administrator to allow specific academic training courses to be credited toward the 1,500 total flight hours, provided the Administrator determines that specific academic training courses will enhance safety more than requiring the pilot to fully comply with the flight hours requirement.

Section 217 also requires the Administrator to consider the recommendations from an expert panel established under section 209(b) of the Act. That section focuses on part 121 and part 135 training programs. A report to Congress and to the NTSB was submitted on September 23, 2011.

D. Related Rulemakings

On May 20, 2011, the FAA published a supplemental notice of proposed rulemaking (SNPRM) proposing to amend the regulations for crewmember and aircraft dispatcher training programs in domestic, flag, and supplemental operations. (76 FR 29336) This SNPRM focuses solely on part 121 air carrier training program requirements. In contrast, the proposed changes contained within this rulemaking address ATP certification training requirements and qualification requirements for pilot crewmembers in part 121 air carrier operations. The comment period for the SNPRM closed on September 19, 2011.

In addition, the Act led to the establishment of the following ARCs:

• Flight Crewmember Mentoring, Leadership, and Professional Development ARC (section 206 of the Act) to develop procedures for part 121 air carriers to establish flight crewmember mentoring programs, establish flight crewmember professional development committees, establish or modify training programs to accommodate substantially different levels and types of flight experience and to incorporate leadership and command training for all flight crewmembers.

• Flight Crewmember Training Hours Requirement Review ARC (section 209 of the Act) to assess and make recommendations to the Administrator on the best methods and optimal time needed for flightcrew members training in part 121 and 135 air carrier operations including determining the best methods to allow specific academic training courses to be credited toward the total flight-hours required to receive an ATP certificate;

• Stick Pusher and Adverse Weather Event Training ARC (section 208 of the Act) to study and submit to the Administrator a report on methods to increase the familiarity and improve the response of flightcrew members on stick pusher systems, icing conditions, and microburst and windshear weather events.

• Air Carrier Safety and Pilot Training ARC (section 204 of the Act) to establish a special task force to be known as the FAA Task Force on Air Carrier Safety and Pilot Training responsible for evaluating best practices in the air carrier industry and providing recommendations on air carrier management responsibilities for flightcrew member education and support, flightcrew member professional standards, flightcrew member training standards and performance, and mentoring and information sharing between air carriers.

Following the FAA's review of the recommendations provided by these ARCs, the FAA will proceed with the rulemaking obligations required by sections 206 and 209 of the Act. The Agency may elect to enter into additional rulemaking based on the reports and recommendations of the remaining ARCs.

III. General Discussion of the Proposal

A. ATP Certificate for All Pilots Operating Under Part 121

Currently, no pilot may act as PIC of an aircraft in part 121 air carrier operations without an ATP certificate and an appropriate type rating for that aircraft. An SIC of a part 121 flag or supplemental operation that requires three or more pilots also must hold an ATP certificate with an appropriate type rating for that aircraft. SICs in all other part 121 air carrier operations are currently required to have only a commercial pilot certificate with the appropriate category and class rating for the aircraft being flown and an instrument rating.

Section 216 of the Act mandates that, within 3 years of enactment, all flightcrew members serving in part 121 operations must hold an ATP certificate.[2] Therefore, the FAA proposes to remove the current certification requirements in § 121.437 and add new §§ 121.435 and 121.436. Section 121.435 would contain the current certification requirements for part 121 pilots, which would expire on July 31, 2013. After that date, the requirements of § 121.436 would apply.

The FAA believes this proposal would have the greatest impact on air carriers that operate regional jet airplanes and/or turbopropeller airplanes. These air carriers generally hire pilots with a commercial pilot certificate and typically less than 1,500 hours total time as a pilot.

The FAA seeks comment on the following:

(1) Is a minimum of 1,500 hours adequate in order to receive an unrestricted ATP certificate? Why or why not?

[2] The FAA notes that section 201 of the Act states that ''[t]he term 'flight crewmember' has the meaning given the term 'flightcrew member' in part 1 of title 14, Code of Federal Regulations.'' Part 1 defines ''flightcrew member'' as ''a pilot, flight engineer, or flight navigator assigned to duty in an aircraft during flight time.'' Because flight engineers and flight navigators have never been required to qualify as pilots, the FAA assumes Congress did not intend to require ATP certificates for these flightcrew members.

(2) As a result of the new ATP requirement for pilots in part 121 operations, what will be the impact on pilot supply for part 121 operations? For part 135 operations? For part 141 pilot schools? For Part 142 training centers?

B. Aeronautical Experience Requirement in the Class of Airplane for the ATP Certificate Sought

Under current regulations, an applicant for an ATP certificate with an airplane category multiengine class rating is not required to obtain any additional multiengine flight experience above the multiengine hours required for a commercial certificate with an airplane category multiengine class rating. Section 216 of the Act addresses the issue of multiengine experience by requiring all pilot flightcrew members serving in part 121 air carrier operations to have appropriate multiengine flight experience, as determined by the Administrator.

As a result of the multiengine requirement in the Act, the FOQ ARC was tasked to identify an appropriate amount of multiengine time for SICs serving in part 121 air carrier operations. The FOQ ARC members recommended a minimum of 50 hours of multiengine flight time to be an SIC.

The FAA believes that multiengine flight experience is essential not only for pilots serving in part 121 air carrier operations but for all pilots who apply for an ATP certificate with an airplane category multiengine class rating. The FAA, therefore, proposes to amend § 61.159 to require 50 hours of flight time in the class of airplane for the ATP certificate sought. This requirement is also included in the new § 61.160. The proposal permits an applicant to receive credit for 10 hours of this flight time in a full flight simulator (FFS) that represents a multiengine airplane. The FAA believes that flight experience in a multiengine airplane provides a valuable foundation that prepares a pilot for a professional piloting career, including a career in part 121 air carrier operations. The FAA believes that this proposal would have minimal impact on pilots seeking an ATP certificate because the hours most often would be acquired while engaged in other commercial aviation activities such as flight instruction or part 135 air carrier operations.

The FAA seeks comment on the following:

(3) Is 50 hours in class of airplane too high, too low, or adequate in order to receive an ATP certificate with airplane category multiengine class rating? Please provide evidence for your response.

C. Aircraft Type Rating for All Pilots Operating Under Part 121

Currently, an SIC of a part 121 flag or supplemental operation that requires three or more pilots must also hold an ATP certificate with a type rating for the aircraft being flown. SICs in all other part 121 operations are not required to hold a type rating in the aircraft being flown.

The FAA has determined that requiring an aircraft type rating for all SICs serving in part 121 operations would improve safety in those operations by exposing the pilot to an advanced multiengine aircraft and a multicrew environment. In addition, requiring an SIC to pass a practical test for the aircraft type rating would ensure the PIC and SIC have met the same level of qualification with regard to the aircraft to be flown. Because the practical test for the aircraft type rating would be conducted by FAA inspectors or FAA designees rather than check airmen, the proposed aircraft type rating would also provide an additional level of regulatory oversight of the pilots' skills and abilities.

This NPRM proposes to include in new § 121.436, the requirement that all SICs in part 121 operations hold an aircraft type rating by August 1, 2013. The FAA believes that this proposal would further the objectives of section 216 of the Act, which requires the Administrator to determine the appropriate multiengine airplane flight experience for pilot flightcrew members. In today's air carrier environment, the roles of pilot flying and pilot monitoring are shared by the PIC and the SIC. Requiring an SIC to train to the level of proficiency necessary to obtain a type rating would ensure the SIC has been evaluated to the same standard as the PIC with regard to handling a transport category multiengine airplane. The FAA believes the proposed aircraft type rating also addresses the requirements in section 217 of the Act by allowing pilots to gain some of the necessary academic and flight experience to operate in an air carrier environment. Specifically, the training and testing for a type rating requires a pilot to demonstrate proficiency in the handling of the airplane in difficult operating conditions, including adverse weather conditions and high altitude operations. The FOQ ARC members unanimously recommended that an SIC hold a type rating in the aircraft to be flown in part 121 air carrier operations.

This proposed amendment would impact any part 121 air carrier that does not currently provide an aircraft type rating to an SIC. The FAA estimates that, for those air carriers that do not currently provide aircraft type ratings for their SICs, the impact of the proposed rule to an air carriers' training program would be low. Currently, all SICs in part 121 operations receive extensive training and a thorough proficiency evaluation at the end of the air carrier's initial training program, such as a proficiency check or line operational evaluation under an advanced qualification program. During the proficiency evaluation, SICs must demonstrate they can perform most of the maneuvers and tasks that would be required for an aircraft type rating. The FAA acknowledges that an SIC may need to receive some additional hours of training on those tasks and maneuvers that are required for a type rating but that are not currently required during the proficiency evaluation. The FAA believes, however, that the practical test for the aircraft type rating could be performed in the same simulator session currently used for the proficiency evaluation. The FAA acknowledges that, unlike a proficiency evaluation, which is typically conducted by a check airman, the practical test for an aircraft type rating would have to be administered by an FAA inspector or FAA designee.

The FAA seeks comment on the following:

(4) Should SICs in part 121 air carrier operations be required to hold an aircraft type rating? Why or why not?

(5) Should all SICs be required to hold an aircraft type rating if the aircraft currently requires a type rating for the PIC, regardless of the rule part the aircraft is operated under (e.g. part 91, 125, or 135)? Why or why not?

D. ATP Certification Training Program for an Airplane Category Multiengine Class Rating or Type Rating

The current regulations do not define any specific academic training or flight training requirements that a pilot must complete prior to being qualified to apply for an ATP certificate with multiengine class rating. An applicant for an ATP certificate with an aircraft type rating must receive and log an unspecified amount of ground and flight training specific to the aircraft type or provide a training record indicating completion of a part 121 or part 135 approved PIC training program for the aircraft type rating.

In the NPRM, the FAA proposes adding § 61.154, which would require pilots seeking an ATP certificate with an airplane category multiengine class rating or type rating to complete specific training requirements prior to taking the ATP knowledge test. The proposed

requirements would be completed as part of a training course that would include academic training and training in an FSTD. The course would establish broader foundational knowledge and understanding in areas critical to operating high performance aircraft in a high altitude and complex environment.

Section 217 of the Act indicates that, in order for an applicant to be eligible for an ATP certificate, he or she must have received academic training, flight training, or experience in a number of areas, including: operations in a multipilot [multicrew] environment; high altitude operations; and adverse weather conditions. The training and experience should prepare the pilot to function effectively in an air carrier operational environment. This section of the Act also requires the applicant to have experience in difficult operational conditions that may be encountered by an air carrier to enable a pilot to operate safely in such an environment.

The most effective way the FAA can ensure applicants for an ATP certificate have met the requirements of section 217 of the Act is to establish specific training requirements and then evaluate the pilot's understanding of those areas of instruction. Due to the specialized nature of the training, the FAA is proposing to require that the curriculum be completed through an approved training program that would incorporate both the training the Act envisioned and training the FOQ ARC identified as desirable competencies of a part 121 new hire. Due to the inherent risks associated with flying in difficult operational conditions, the FAA, consistent with the FOQ ARC recommendation, is not proposing that this training be accomplished in an actual aircraft. Additionally, due to the focus on air carrier operations, the FAA has proposed that the training be required only for those applicants for an ATP certificate with airplane category multiengine class rating or type rating. This training would not be applicable to single-engine airplane operations, rotorcraft operations, or powered-lift operations.

The academic portion of the training course incorporates most of the competencies identified by the FOQ ARC including: swept wing aerodynamics, automation, air carrier operations, adverse weather conditions, transport aircraft performance, high altitude operations, and navigation. Training in all topics would be taught with an air carrier perspective and focus on the unique characteristics of large transport category aircraft recognizing this would likely be the pilots' first exposure to many of these aeronautical knowledge areas.

The FSTD portion of the training course would consolidate the knowledge gained from the academic portion of the course and include training in difficult operational conditions, as required by the Act. The areas to be trained in FSTDs also include seven of the nine competency areas identified by the FOQ ARC. Those areas are: convective activity, icing conditions, low-visibility conditions, maximum crosswind conditions, contaminated runways, areas of clear air turbulence, and areas of mountain wave activity. Many of the training topics, such as crew coordination, checklist/briefing items, collision avoidance systems, and performance calculations, could be taught in lower level devices such as Level 4 FTDs. However, the FAA is specifically proposing to require low energy states/stalls, upset recovery techniques, and adverse weather conditions, including icing, thunderstorms, and crosswinds with gusts, be conducted in a Level C or higher FFS. The FAA believes only Level C and higher FFSs can replicate the sensory perceptions necessary to allow the applicant the opportunity to fully grasp these critical concepts.

As a result of the FSTD requirement, the proposed ATP Certification Training Program could only be conducted by the following certificate holders: a part 141 pilot school, a part 142 training center, a part 121 air carrier, or a part 135 air carrier. To maintain consistency of the ATP Certification Training Program, each program would receive approval by a single source, the Air Transportation Division of the Flight Standards Service in Washington, DC. The FAA is making available in the docket for this NPRM a proposed advisory circular that provides information and courseware guidelines that would enable authorized providers to develop a training program that would meet the requirements of the proposed § 61.154.

The FAA proposes, for the ATP Certification Training Program, enhanced instructor requirements for parts 121, 135, 141, and 142. The proposal would require that each instructor of a § 61.154 training course must hold an ATP certificate with an airplane category multiengine class rating, meet the aeronautical experience requirements of § 61.159, and have at least 2 years of experience as a pilot in operations under § 91.1053(a)(2)(i) or § 135.243(a)(1), or in any operation conducted under part 121. The FAA is also proposing to require that instructors who provide training in an FSTD have an appropriate aircraft type rating which the FSTD represents or have received training in the aircraft type from the certificate holder on those maneuvers they will teach. Although the training course contains academic subjects for which subject matter experts might be appropriate, the majority of the training course would focus on applying high level concepts to an air carrier environment. The FAA believes these concepts can only be properly conveyed through an instructor with operational experience. The FAA has consistently required instructors who provide training related to air carrier operations to have line operational experience. Therefore, the proposed instructor requirements for the ATP Certification Training Program would be consistent with current practice.

In light of the importance of the areas covered in the proposed training course, the FAA would also revise the current ATP knowledge test specifically for applicants who are seeking an ATP certificate with an airplane category multiengine class rating or type rating. To facilitate the transition to the proposed training requirement, those applicants who have not successfully completed the knowledge test prior to August 1, 2013, would be required to complete the training course before applying for the knowledge test. For applicants who pass the knowledge test before that date, the test results would be valid until July 31, 2015. Pilots failing to pass the practical test prior to July 31, 2015, would be required to complete the new training course and retake the knowledge test before applying to take the practical test. The FAA is also proposing that, for those applicants who pass the knowledge test after completing the ATP certification training program, the test results will expire 60 calendar months after the knowledge test was successfully completed. The FAA proposes to amend §§ 61.35, 61.39 and 61.155 to reflect these changes.

The FAA emphasizes that this ATP Certification Training Program would be a basic certification requirement, not an air carrier training program requirement. Although part 121 and part 135 air carriers may elect to offer this training for their pilots, it would remain separate from the air carriers' part 121 and part 135 training requirements. Because the proposed ATP Certification Training Program is foundational, air carriers who elect to offer this training would be required to provide the course to their pilots prior to beginning initial training. A principal operations inspector may approve a reduction of hours in an air

carrier's initial training program based on material taught in the ATP Certification Training Program. However, because the ATP Certification Training Program requirements are basic certification requirements, they may not be reduced based on the contents of an air carrier's initial training program. These requirements would also respond to NTSB Safety Recommendations identified in section II.C.3 of this preamble.

The FAA seeks comment on the following:

(6) Should pilots wanting to obtain an ATP certificate with airplane category multiengine class rating or type rating be required to take an additional training course prior to taking the knowledge test? Why or why not?

(7) If academic training is required in an ATP certification training course, what topics are appropriate? How many hours are appropriate for such a course?

(8) Should an ATP certification training course include non-type specific FSTD training on concepts that are generally universal to transport category aircraft? Why or why not?

(9) If FSTD training is required, what level of FSTD is appropriate? How many hours are appropriate?

(10) Based on the proposed content of the ATP Certification Training Program, what changes or reductions could be made to a part 121 air carrier training program?

(11) The FAA assumes parts 121, 135, 141, and 142 certificate holders will be able to provide the ATP Certification Training Program. What factors would these certificate holders principally consider in determining whether or not to offer the course?

E. ATP Certificate With Restricted Privileges Based on Academic and Military Training

Although section 217 of the Act mandates that an applicant for an ATP certificate must have ''at least 1,500 flight hours,'' the section also permits applicants to obtain an ATP certificate with fewer than the minimum 1,500 hours if they have completed ''specific academic training courses,'' as determined by the Administrator. Current regulations do not define the term ''flight hours''; therefore, the FAA assumes that the 1,500 flight hours referenced in the Act represents the 1,500 hours total time as a pilot currently required by § 61.159. Under current rules, there is a provision that permits a flight engineer to obtain an ATP certificate with fewer than 1,500 hours. Section 61.159 allows a pilot with a commercial pilot certificate to credit up to 500 hours of experience gained as a flight engineer toward the 1,500 hours total time as a pilot.

Based on the discretion afforded to the Administrator in section 217 of the Act, the FAA proposes a new section, § 61.160. The new section would provide for two alternative hour requirements for an ATP certificate with airplane category multiengine class rating or type rating based on academic experience. The FAA emphasizes that a pilot who obtains an ATP certificate under the aeronautical experience requirements of this new section would have restricted privileges. As specified in proposed § 61.168, a pilot holding an ATP certificate with fewer than 1,500 hours would not be permitted to perform the duties of PIC in any operation that currently requires an ATP certificate, namely, all part 121 operations and operations conducted under §§ 91.1053 and 135.243. A pilot holding a restricted privileges ATP certificate would be permitted to serve as SIC in part 121 operations that do not require three or more pilots. The FAA is proposing to amend § 61.167 in order to preclude a pilot who holds an ATP certificate with restricted privileges from providing instruction in accordance with that section. In addition, the FAA is proposing to modify the eligibility requirements of § 61.153 to establish a minimum age of 21 years for a restricted privileges ATP certificate.

The FAA is proposing the following alternative hour requirements for a restricted privileges ATP certificate with airplane category multiengine class rating or type rating:

- 750 hours for a military pilot; and
- 1,000 hours for a graduate of a four-year baccalaureate aviation-degree program who also received their commercial certificate and instrument rating from an affiliated part 141 pilot school.

Pilots who meet these alternative hour requirements would be required to pass the same ATP knowledge and practical tests as those pilots who obtain an ATP certificate at 1,500 hours. These pilots would have the following limitation placed on their certificates: ''Restricted in accordance with 14 CFR § 61.168(a)'' and ''Holder does not meet the pilot in command aeronautical experience requirements of ICAO.'' The FAA proposes in new § 61.168 that the restriction may be removed from the ATP certificate once the pilot provides satisfactory evidence that the pilot has met the age requirements in proposed § 61.153(a)(1) and the aeronautical experience requirements of § 61.159. The proposal to allow military pilots and graduates of 4-year colleges and universities with aviation-related majors to obtain a restricted privileges ATP certificate is based on the specific nature of the training that those pilots receive.

In order to be accepted into a pilot training program in one of the branches of the military, a person must undergo a rigorous screening process including an assessment of the individual's aviation aptitude. Depending on the branch of the military, an applicant for pilot training must hold an associate's degree or a bachelor's degree. Once accepted into a pilot training program, a person is 100 percent dedicated to aviation training. As an example, the United States Air Force Specialized Undergraduate Pilot Training (SUPT) includes 4 to 6 weeks of academic and preflight training on aerospace physiology, altitude chamber tests, aircraft systems, aviation weather, mission planning, and navigation. After academic and preflight training, the Air Force student pilot undergoes 22 weeks of primary aircraft training before transitioning to a track of advanced aircraft training that continues for another 24 to 28 weeks. An Air Force student pilot is committed to a 12-hour duty day while at SUPT, and his or her flight proficiency is continuously assessed throughout training. Additionally, during the flight training phases, an Air Force student pilot participates in flight training every day, normally either in a simulator or an aircraft. Based on the comprehensive and demanding nature of this academic training, the FAA proposes to allow military pilots to apply for the ATP practical test after obtaining 750 hours of flight time and meeting the other aeronautical experience requirements in § 61.160(a).

Based on averages provided by the military, the FAA believes that the majority of military pilots who complete their service obligations will have acquired the 1,500 hours required for an unrestricted ATP certificate. Army pilots, who average approximately 800 hours when they complete their service obligations, and pilots who are honorably discharged from the military prior to completing their service obligation would be most likely to benefit from the reduced hours provision. When applying for the practical test, military pilots would be required to present the documents listed in § 61.73(h) to substantiate their eligibility for a restricted privileges ATP certificate. These documents include an official U.S. Armed Forces record that shows the person graduated from a U.S. Armed Forces pilot training school and received a rating qualification as a

military pilot. The FAA has proposed to amend § 61.39 to reflect this documentation requirement.

With regard to graduates of 4-year colleges and universities with aviation-related majors who obtained their commercial pilot certificate and instrument rating from an affiliated part 141 pilot school, the FAA believes that these students also receive concentrated and focused aviation training. Students complete a course of academic study in an aviation-related major while concurrently training at the university's affiliated FAA-approved part 141 pilot school. Through their academic coursework, these students receive a solid foundation in various topics that may include aeronautical science and technology, aviation meteorology, air traffic operations, air transportation, aviation law, aircraft systems, and CRM. The coursework is comprehensive, structured, and focused on preparing the student, over the course of 4 years, for a professional career in the aviation industry. The flight training accomplished through the college or university's part 141 pilot school is integrated with in-depth academic ground training. The student is continuously evaluated with academic testing and flight evaluations throughout the courses that lead to pilot certificates and ratings. In addition, these aviation programs are specifically focused on preparing pilots for careers in aviation. Under the proposed rule, a graduate of an accredited 4-year college or university who received a bachelor's degree in an aviation-related field and a commercial pilot certificate with an instrument rating from an affiliated part 141 pilot school, would be allowed to apply for the ATP practical test with 1,000 hours total time as a pilot.

The FAA would recognize those postsecondary educational institutions that satisfy the definition of ''accredited'' as that term is used by the Department of Education in 34 CFR 600.2. The Department of Education maintains a database of accredited postsecondary institutions and programs (*http://ope.ed.gov/accreditation/*). Prior to taking the ATP practical test, pilots would be required to present an official transcript which validates their eligibility for a restricted privileges ATP certificate. The FAA has proposed to amend § 61.39 to reflect this documentation requirement.

The FOQ ARC recommended crediting academic training as well as aeronautical experience. The ARC developed a complex system that not only permitted flight-hour credit for a variety of academic training including both 2- and 4-year aviation degrees, but also allowed weighted credit for various flight experiences. The weighted flight experience concept gave a multiplier effect to hours that were deemed more applicable to air carrier operations and therefore more valuable to a prospective air carrier flightcrew member. The weighted experiences valued hours such as providing instruction as a certified flight instructor and hours accrued in a multiengine turbine powered airplane. The FAA has reviewed and considered the FOQ ARC's crediting system, and to a limited extent adopted the academic crediting provision. While the FAA finds value in the weighted flight experience concept, the FAA does not believe the Act permits giving added flight hour credit to certain types of flight experience to reduce the minimum required flight hours for the ATP certificate.

The FAA seeks comments on the following:

(12) Should the FAA offer an ATP certificate with restricted privileges for pilots with fewer than 1,500 flight hours based on academic training and/or experience? Why or why not? If so, how many hours would be appropriate? Should anyone other than military pilots or graduates of 4-year colleges and universities with aviation-related degrees and commercial pilot certificates with instrument ratings obtained from an affiliated part 141 pilot school be eligible? Why or why not?

(13) Should military pilots be allowed to receive an ATP certificate with restricted privileges? Why or why not? If so, is the proposed 750 hours too high, too low, or adequate?

(14) Should graduates of 4-year colleges and universities with aviation-related majors and commercial pilot certificates with instrument ratings obtained from an affiliated part 141 pilot school be allowed to receive an ATP certificate with restricted privileges? Why or why not? If so, is the proposed 1,000 hours too high, too low, or adequate?

(15) Should military pilots and/or graduates of 4-year colleges and universities with aviation-related majors and commercial pilot certificates with instrument ratings obtained from an affiliated part 141 pilot school be allowed to receive an ATP certificate without restrictions with fewer than 1,500 hours? Why or why not? If so, how many hours would be appropriate?

(16) Should a pilot who obtains a degree with an aviation-related major from a 4-year college or university and a commercial pilot certificate with instrument rating from a part 141 pilot school not affiliated with the college or university be eligible for a restricted privileges ATP certificate? Why or why not? If so, how many hours should they be required to have? And, should there be a time limit between the baccalaureate training and the flight training if they were not done concurrently?

(17) Should the FAA consider an alternative licensing structure for pilots who desire only to fly for a part 121 air carrier (e.g. multicrew pilot license)? Why or why not?

(18) If the FAA were to adopt a licensing structure for a multicrew pilot license, what would be the appropriate amount and type of ground and flight training?

F. Minimum of 1,000 Hours in Air Carrier Operations To Serve as PIC in Part 121 Operations

Under current regulations, a pilot may serve as PIC in part 121 operations with 1,500 hours total time as a pilot. There is no requirement that a pilot have a minimum number of hours as an SIC in air carrier operations prior to serving as PIC. Historically, such a provision was not required due to the number of pilots who had well in excess of 1,500 hours at the time they were hired by air carriers. In addition, these pilots often served as an SIC for several years before serving as PIC as a result of individual air carrier practices. Finally, under current regulations, commercial pilots must serve for a period of time as SIC before obtaining sufficient hours to apply for an ATP certificate and upgrade to PIC. In light of the fact that the SIC lacked sufficient hours to serve as PIC, a natural mentoring process occurred for less experienced pilots.

An unintended consequence of the Act's requirement for all part 121 pilots to hold an ATP certificate is that the natural mentoring of SICs may not occur. The FAA believes that the time that an SIC spends observing a PIC plays an important role in preparing the SIC for eventual upgrade to PIC. A PIC in air carrier operations is expected to possess leadership and command abilities including aeronautical decisionmaking and sound judgment necessary to exercise operational control of the flight. The PIC should serve as a mentor and assist in the professional development of the SIC.

Section 217 of the Act directs the Administrator to determine the sufficient flight hours ''to enable a pilot to function effectively in an air carrier environment.'' The FAA is proposing to add a provision to new § 121.436 that would require a pilot to have 1,000 hours in air carrier operations prior to serving as PIC in part 121 operations.

This requirement would ensure that, prior to serving as PIC in part 121 operations, a pilot has obtained at least one full year of relevant operational experience. The 1,000 hours in air carrier operations may be a combination of time as PIC in operations conducted under § 91.1053(a)(2)(i) or § 135.243(a)(1) or as SIC in part 121 operations. The FAA is proposing to allow a pilot to count PIC time in operations conducted under § 91.1053(a)(2)(i) or § 135.243(a)(1) because these operations require an ATP certificate and type rating and are similar to operations conducted under part 121. A PIC in these operations has demonstrated leadership and command abilities including aeronautical decisionmaking and the judgment necessary to exercise operational control of the flight. Additionally, a PIC in these operations has served as a mentor and assisted in the professional development of SICs. The FAA believes that the training and experience gained in these operations aid in the professional development of a pilot and develop the competencies required to serve as a PIC in part 121 operations. This provision would also address, in part, many of the concerns surrounding pilot professionalism identified by the NTSB in its Safety Recommendation letter to the FAA on February 23, 2010, and address many of the concerns of the FOQ ARC members.

The FAA seeks comments on the following:

(19) If all pilots in part 121 air carrier operations are required to hold an ATP certificate, should there be additional requirements prior to operating as a PIC in part 121 air carrier operations? If so, what should those requirements be?

(20) Is the proposed flight hour requirement for serving as SIC before moving to PIC too long, too short, or adequate?

(21) Should the proposed PIC time in part 91 subpart K or part 135 operations count towards the part 121 PIC requirement? Why or why not?

(22) Should SIC time outside of part 121 operations count towards the proposed requirement? Why or why not?

G. Miscellaneous Amendments

The FAA has proposed several miscellaneous amendments to parts 61 and 142. These amendments are non-substantive technical amendments, mostly to define terms, remove obsolete provisions, and make minor conforming changes to existing regulations. One proposal would remove several references to SFAR No. 58 because that provision already was removed from chapter 14 of the Code of Federal Regulations.

The FAA is also proposing to amend the definitions in § 61.1. The definitions of ''flight training device'' and ''flight simulator'' would be removed because those terms are defined in parts 1 and 60. New definitions of ''accredited'' and ''nationally recognized accrediting agency'' would be added in order to clarify which institutions' graduates would qualify for an ATP certificate with restricted privileges.

Additionally, the FAA is proposing several minor conforming amendments to update cross-references in various sections of the regulations and to make other editorial corrections.

Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Title: Pilot Certification and Qualification Requirements for Air Carrier Operations.

Summary: This proposal would amend the requirements for obtaining an airline transport pilot (ATP) certificate by requiring pilot applicants for an ATP certificate with airplane category multiengine class rating or type rating to complete a new ATP Certification Training Program. Any part 142 training center, part 141 pilot school, or air carrier wishing to offer the new training program would be required to submit the curriculum to the FAA for approval.

Use of: This proposed information collection would ensure pilots seeking employment in an air carrier environment are adequately trained on the knowledge and skills they need to function in a multicrew environment in a variety of operating conditions. The requirement to submit the ATP Certification Training Program curriculum to the FAA for approval would provide greater oversight of the training programs and ensure consistency of both course and instructional quality among the training centers, pilot schools, and air carriers.

Part 121, 135, 141, or 142 certificate holders that wish to offer or provide the ATP Certification Training Program would be required to develop and submit a course for approval by the FAA. For those that provide this training, additional pilot training record keeping would also be required.

The following estimate corresponds to section IV of the economic evaluation.

Industry ATP Course Development Costs

Initial number of certificate holders offering the ATP course = 20.
Time needed to develop the ATP course = 120 hours.
Salary of a ground instructor = $32.55.

First-Year Cost

Cost: 20 × 120 × $32.55 = $78,120.
Time: 20 × 120 = 2,400 hours.

Subsequent Years: Per-Year Costs

Cost: 1 × 120 × $32.55 = $3,906.
Time: 1 × 120 = 120 hours.

Total Over 10 Years

Cost: $113,274.
Time: 3,480 hours.

Average Per Year

Cost: $11,327.
Time: 348 hours.

Industry Recordkeeping Costs

Initial number of ATP applicants = 2910.
Time needed for recordkeeping per pilot = 0.1 hours.
Salary of a ground instructor = $32.55.

First-Year Cost

Cost: 2910 × 0.1 × $32.55 = $9,472.
Time: 2910 × 0.1 = 291 hours.

Subsequent Years: Avg. Per-Year Costs

Cost: 3,580 × 0.1 × $32.55 = $11,652.
Time: 3,580 × 0.1 = 358 hours.

Total Over 10 Years

Cost: $114,306.
Time: 3,512 hours.

Average Per Year

Cost: $11,431.
Time: 351 hours.

FAA ATP Course Review Costs

Initial number of certificate holders requesting ATP course approval = 20.
Time needed to review the ATP course = 4 hours.
Salary of an aviation safety inspector = $61.50.

First-Year Cost

Cost: 20 × 4 × $61.50 = $4,920.
Time: 20 × 4 = 80 hours.

Subsequent Years: Per-Year Costs

Cost: 1 × 4 × $61.50 = $246.
Time: 1 × 4 = 4 hours.

Total Over 10 Years

Cost: $7,134.
Time: 116 hours.

Average Per Year

Cost: $713.
Time: 11.6 hours.

FAA Approval Letter Costs

Initial number of certificate holders requesting ATP course approval = 20.
Time needed to issue the approval letter = 0.5 hours.
Salary of clerk/secretary = $24.67.

First-Year Cost

Cost: 20 × 0.5 × $24.67 = $246.70.
Time: 20 × 0.5 = 10 hours.

Subsequent Years: Per-Year Costs

Cost: 1 × 0.5 × $24.67 = $12.34.
Time: 1 × 0.5 = 0.5 hours.

Total Over 10 Years

Cost: $357.72.
Time: 14.5 hours.

Average Per Year

Cost: $35.77.
Time: 1.45 hours.

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement by April 30, 2012, and should direct them to the address listed in the **ADDRESSES** section at the end of this preamble. Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Building, Room 10202, 725 17th Street NW., Washington, DC 20053.

According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations except in the following limited respect. The FAA notes that, although pilots will be able to obtain a restricted privileges ATP certificate in fewer than the ICAO standard of 1,500 hours, those pilots will not have the pilot in command privileges of pilots who hold unrestricted ATP certificates. This pilot in command restriction will be reflected on the pilot's certificate. The experience and qualifications of the pilots who hold restricted privileges ATP certificates will exceed the ICAO standards for second-in-command.

IV. Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. Readers seeking greater detail should read the full regulatory evaluation, a copy of which has been placed in the docket for this rulemaking.

In conducting these analyses, the FAA has determined that this proposed rule: (1) Satisfies a Congressional requirement to improve aviation safety; (2) is an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is ''significant'' as defined in the DOT's Regulatory Policies and Procedures; (4) would not have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Total Costs and Benefits of This Proposed Rule

The proposed rule's requirements of an ATP certificate and aircraft type rating for part 121 SICs, 1,000 hours of flight experience in air carrier operations prior to serving as a part 121 PIC—and 50 hours of ME time and a foundational ATP Certification Training Program for pilots seeking an ATP certificate with airplane category and multiengine class rating or type rating—would, as a group of requirements, enhance the qualifications, experience, and seasoning of pilots. As a consequence, the FAA believes that the proposed rule would enhance safety by reducing the accident rate in air carrier operations.

The FAA estimates that the cost will be minimal for the requirement of 50 hours of multiengine time for applicants for the ATP certificate with an airplane category multiengine class rating or type rating. Multiengine hours are typically acquired while engaged in other commercial aviation activities such as flight instruction or part 135 air carrier operations. Airlines currently post minimums for multiengine time from 50 hours to as much as 1,500 hours.[3]

The FAA also estimates as minimal the costs of the requirement that a pilot have 1,000 hours of air carrier operating experience prior to serving as a part 121 PIC. According to information provided by industry,[4] the average number of years for an SIC to upgrade to a PIC is about five years for operators which use regional jet airplanes and/or turbopropeller airplanes and more than ten years for major airlines. Even without air carrier operating experience in part 135 or part 91, subpart K operations, at an average number of 750

[3] Kit Darby, President, *www.KitDarby.com,* Aviation Consulting, LLC, Peachtree City, GA.

[4] Owing to the expedited nature of this proposed rule, questionnaires were sent to the Air Transport Association (ATA) and the Regional Airlines Association (RAA), who, in turn, distributed the questionnaire to selected members. Five responses were received from the major airlines and three from the regional airlines.

flight hours a year, an SIC will accumulate the required hours in 1⅓ years.

Accordingly, Table 1 shows the expected costs of the proposed rule based on the costs of the three remaining requirements—the ATP Certification Training Program, the type rating requirement for part 121 SICs, and the part 121 ATP Certificate requirement for SICs. Table 1 also shows the expected benefits of the proposed rule. Using a pre-statute baseline, the table shows the total costs of the proposed rule to be $2,018.5 million, with present value cost of $782.4 million and annualized present value cost of $73.9 million. The total benefits of the proposed rule are $896.0 million, with present value of $384.1 million and annualized present value benefits of $36.3 million. However, since the FAA currently requires 1,500 hours for an ATP certificate, and the requirement for an SIC to hold an ATP certificate will take effect whether or not a regulation is issued, the cost of $1,575.2 million ($582.0 million in present value) associated with this provision are attributable to the statute, not the proposed regulation. Therefore, using a post-statute baseline, Table 1 shows that the proposed rule is cost beneficial as expected costs are $443.3 million ($200.4 million in present value), which are now less than the expected benefits of $896.0 million ($384.1 million in present value). In comparing costs and benefits, however, we must consider part 121 operators separately since all of the cost drivers apply to part 121 operators, while just the cost of the ATP Certification Training Program applies to part 135 and part 91, subpart K, operators.

As the table shows, for part 121 operators the proposed rule is cost-beneficial since present value benefits, at $225.1 million,[5] are greater than present value costs, at 179.0 million. For part 135 operators present value benefits are $159.0 million, while present value costs are $14.8 million, so for part 135 operators the proposed rule is overwhelmingly cost-beneficial. Although the FAA does not have an estimate of benefits for part 91, subpart K, operators, these operators have pilot certification and operating rules similar to part 135 operators. Given the overwhelming benefit-cost ratio for part 135 operators, we are confident that the proposed rule is cost-beneficial for part 91, subpart K, operators as well.

TABLE 1—SUMMARY OF COSTS AND BENEFITS OF PROPOSED FOQ RULE, 2013–2032

	Total cost ($ mil.)	PV cost ($ mil.)	Annualized PV cost ($ mil.)
Part 121 ATP Certificate Requirement	$1,575.2	$582.0	$54.9
ATP Practical Test	.....	23.3	2.2
ATP 1,500 Hour Requirement	2,520.4	901.8	85.1
Savings from 750-hour ATP Military Credit	(219.8)	(78.6)	(7.4)
Savings from 500-hour ATP Educational Credit	(725.5)	(264.5)	(25.0)
Type Rating (Part 121 Operators Only)	.....	3.4	0.3
ATP Certification Training Program	443.3	196.9	18.6
Part 121 Operators	396.6	175.6	16.6
Part 135 Operators	32.5	14.8	1.4
Part 91, Subpart K, Operators	14.3	6.5	0.6
Total Social Cost—Part 121 Operators (Pre-statutory baseline)	*1,971.7*	*761.0*	*71.8*
Total Social Cost (Pre-statutory baseline)	2,018.5	782.4	73.9
Costs Attributable to Proposed Rule—Part 121 Operators (Post-statutory baseline)	*396.6*	*179.0*	16.9
Costs Attributable to Proposed Rule (Post-statutory baseline)	443.3	200.4	18.9
	Total benefits ($ mil.)	PV benefits ($ mil.)	Annualized PV benefits
Part 121 Benefits	$525.0	$25.1	$21.2
Part 135 Benefits	371.0	159.0	15.0
Total Social Benefit	896.0	384.1	36.3

Notes:

1. Although a social cost, the cost of the ATP certificate requirement is not a cost attributable to the proposed rule, as the requirement is specifically mandated by the Airline Safety Act of 2010.
2. Although incremental total costs of the ATP practical test and type rating are zero, incremental present value costs are positive. See discussion in the text below.
3. The same flight test qualifies a pilot for both the ATP certificate and the type rating. The incremental present value cost of the type rating requirement ($3.4 million) occurs because more current pilots have ATP certificates than type ratings.
4. Owing to a requirement of a preliminary version of the regulatory evaluation, the incremental cost of the type rating requirement includes the cost of the ATP written exam. As this is an extremely small cost, it is not reallocated here to the cost of the ATP certification requirement.
5. Annualized PV Cost/Benefit is the annual cash flow of the 20-year annuity that yields the same present value as the cost/benefit item.
6. Column sums may be off one or more units from totals owing to rounding.

[5] Some of these benefits are presumably attributable to the statute's ATP requirement, but as noted in the following section, we find at most $23.0 million attributable to the statute, with the likely amount much less. As Table 1 shows part 121 benefits to be $46.1 million greater than costs, the proposed rule would still be cost-beneficial even if the maximum $23.0 million were attributable to the statute.

Costs and Benefits of the ATP 1500-Hour Requirement

As the ATP certificate requirement for part 121 SICs is mandated by the Airline Safety Act of 2010 and is self-executing,[6] the FAA attributes the cost of the requirement to the statute and not the proposed rule

The FAA's Office of Accident Investigation and Prevention (AVP) found little relationship between the 1,500-hour requirement and airplane accidents. Only 7 of the 31 accidents used for the part 121 benefit analysis had SICs with less than 1,500 hours. Moreover, the NTSB reports on these seven accidents indicate other issues addressed by the proposed rule. Finally, the 7 accidents with SICs with less than 1,500 flight hours account for just 10.2% of the FAA's estimated $225.1 million part 121 benefits, or $23.0 million, which, accordingly, is the maximum that could be attributable to the statute's 1500-hour requirement.

As the 1,500-hour requirement is required by statute, the FAA did not further pursue the estimation of the requirement's benefits.

Who is potentially affected by this rule?

The proposed requirements would most affect any individual seeking an ATP certificate with an airplane category multiengine class rating. The proposed requirements would also affect any person wanting to serve as pilot in command (PIC) in part 121 air carrier operations as well as an individual wishing to serve as PIC in part 91 subpart K operations or part 135 operations as defined by § 91.1053(a)(2)(i) or § 135.243(a)(1). In addition, persons wanting to serve as second in command (SIC) in part 121 air carrier operations would be affected by the proposed rules.

Principal Assumptions and Sources of Information

- The FAA uses a 20-year period of analysis in order to more fully account for costs that will accumulate over time as new pilots replace retiring pilots unaffected by the proposed rule. As the final rule will become effective on August 2, 2013, the FAA uses the 20-year period of analysis, 2013–2032. As for the most part the FAA is using 2010 prices, in calculating present values discounted back to 2010.
- Discount rate is 7 percent (Office of Management & Budget, Circular A–4, ''Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs,'' October 29, 1992, p. 8, *www.whitehouse.gov/omb/circulars/index.html*).
- VSL ($6 million) and value of prevented injuries: United States Office of the Secretary of Transportation. Memorandum: Treatment of the Economic Value of a Statistical Life in Departmental Analyses—2009 Annual Revision, March 18, 2009.
- Number of rule-related accidents and associated number of fatalities, number of minor and serious injuries, aircraft model, and aircraft damage: FAA, Office of Accident Investigation and Prevention (AVP).
- Market value of aircraft and restoration costs: APO update to 2008 of data in Economic Values for FAA Investment and Regulatory Decisions, A Guide, Section 5. Office of Aviation Policy and Plans, U.S. Federal Aviation Administration, Wash., DC, Dec. 31, 2004.
- Number of part 121 PICs and SICs by airline and part 135 ATP pilots; and part 91, subpart K, fractional ownership program PICs: FAA, Flight Standards Service, National Vital Information Subsystem (NVIS) database (Nov. 22, 2010; Dec. 10, 2010).
- Pilot growth rate (0.6%): U.S. DOT, FAA, Aviation Policy & Plans. FAA Aerospace Forecast: 2010–2030. Table 29, ''Active Pilots by Type of Certificate'', Air Transport, Avg Annual Growth, 2009–2030.
- Cost of ATP Certification Training Program and cost of type rating: Industry survey and FAA Flight Standards Service.
- Percentage of SICs without PTC (major & cargo airlines and regional airlines): Estimated from industry survey.
- Percentage of SICs without type rating (major & cargo airlines and regional airlines): Estimated from industry survey.
- Typical number of years for upgrade from SIC to PIC (Major airlines: 10 years, Regionals: 5 years): Estimated from industry survey.
- Typical number of years after which PIC will move from regional airline to major airline (2 years): Industry survey.
- Pilot salary data by airline (2008): *www.airlinepilotcentral.com.*
- Number of part 121 retiring pilots (minimum): Calculated using *www.faa.gov,* Data and Research, U.S. Civil Airmen Statistics, Annual Statistics, 2009. Table 12, ''Estimated Active Certificates Held As of December 31, 2009.''
- Early and medical pilot retirement rate (0.5%): Email from Kit Darby, President, *www.KitDarby.com,* Aviation Consulting, LLC, Peachtree City, GA, dated 12/18/2010.
- Flight experience of military pilots leaving the service: FAA Flight Standards Service, Air Transportation Division (AFS–200), Air Carrier Training Branch (AFS–210).
- Hiring minimums by airline & airline group and percentage of pilots hired with military training: Kit Darby, President, *www.KitDarby.com,* Aviation Consulting, LLC, Peachtree City, GA.
- Number of baccalaureates with aviation-related degrees: Aviation Accreditation Board International (AABI), Gary W. Kiteley, Executive Director, 3410 Skyway Drive, Auburn, AL.
- The FAA assumes safety benefits will grow at the annual growth rate of air carrier revenue passenger miles. Source: U.S. DOT, FAA, Aviation Policy & Plans. FAA Aerospace Forecast: 2010–2030. Table 5, ''U.S. Commercial Air Carriers' Total Scheduled U.S. Passenger Traffic'', Revenue Passenger Miles, System [Domestic + Int'l], Avg Annual Growth, 2009–2030.

Costs of This Proposed Rule

As discussed above, the FAA estimates costs to be minimal for the requirement that holders of the ATP certificate have 50 hours of multiengine time and the requirement that a pilot have 1,000 hours of air carrier experience prior to serving as PIC in part 121 operations. The FAA estimates that the three remaining provisions of the rule—the ATP Certification Training Program, the type rating requirement for part 121 SICs, and the ATP certification requirement—could have cost implications, although, as already noted, since the latter requirement is mandated by the Airline Safety Act of 2010, the FAA attributes that cost to the statute, not the proposed rule. The costs of each of these three requirements is discussed further below.

Cost of ATP Certification Training Program

The requirement for the ATP Certification Training Program applies to all new applicants for an ATP certificate with an airplane category multiengine class rating or type rating. Accordingly, the ATP Certification Training Program would apply to all pilots in part 121 operations, all PICs in part 91, subpart K, Fractional Ownership Operations, and all part 135 air carrier operations requiring the PIC to hold an ATP certificate. Part 135 operations requiring the PIC to hold an ATP certificate with an airplane category multiengine class rating are (1) commuter operations using multiengine

[6] More specifically, Section 217 of the Act requires that ''The total flight hours required by the Administrator * * * shall be at least 1,500 flight hours.''

airplanes with nine or fewer passenger seats (''Scheduled 135'') and (2) on-demand operations using multiengine airplanes with 10 or more passenger seats or turbojets.

The FAA anticipates that the ATP Certification Training Program would be a 7-day course, typically conducted by part 142 training center or a part 121 air carrier just prior to a pilot's initial pilot training. The FAA anticipates the course would entail three days of ground school and four days of flight training—two days with an FTD and two days with a Level C or D simulator. Typically two pilots train concurrently in a simulator and this is reflected in the simulator estimates of cost per pilot.

Table 2 reflects the estimated cost factors for the training program and Table 3 reflects the total cost per pilot calculations.

TABLE 2—COST FACTORS FOR THE ATP CERTIFICATION TRAINING PROGRAM

Cost factor	Rate	Period
Ground school instructor	$33	per hour.
Simulator instructor	130	per hour.
Level C or D simulator	2,000	4-hr simulator event.
FSTD	400	4-hr simulator event.
Training pay	1,302	per month.
Hotel	90	per day.
Per diem	45	per day.

Sources:
1. Pay rates incorporate a benefits factor of 1.302—Employee Benefit Research Institute, www.ebri.org (Benefit FAQs).
2. Other cost factors—Industry survey and FAA Flight Standards Service.

TABLE 3—COST PER PILOT OF 7-DAY ATP CERTIFICATION TRAINING PROGRAM

Item	Item cost
Ground school instructor (3 days)	$39
Simulator instructor (four 4-hr events)	2,083
Level C or D simulator (two 4-hr events, 2 pilots)	2,000
FSTD (two 4-hr events, two pilots)	400
Training pay & benefits (7 days)	304
Hotel (7 days)	630
Per diem (7 days)	315
Total Cost per Pilot	5,771

Notes:
1. Ground school class sizes are assumed to average 20 pilots.
2. Simulator instructor, simulator, and FTD costs reflect the fact that flight training is typically done with two pilots concurrently.
3. As the FAA anticipates that the training would take place just prior to initial pilot training, there would be no incremental travel costs.

The FAA uses cost per pilot from Table 3 to estimate total and present value costs for new pilots over the 2013–2032 estimation period. (As indicated in the section on type rating costs below, current pilots without an ATP will be able to obtain one at no additional cost when fulfilling the requirements for a type rating.) The FAA estimates the total cost of the ATP Certification Training Program over the 20-year estimation period, 2013–2032 to be $443.3 million with present value of $196.9 million.

Cost of an ATP Certificate/Aircraft Type Rating

The rule proposes that all SICs in part 121 operations hold an aircraft type rating for the aircraft flown by August 2, 2013, the same date that the SICs are required to hold an ATP certificate by Congressional mandate. The ATP practical test standards are the same standards used for a type rating practical test. Given the statute's requirement for an ATP certificate, the incremental cost of the proposed rule's requirement for an aircraft type rating is zero. Some current SICs, however, already hold the ATP certificate. For these pilots, there would be an incremental cost for the type rating.[7] Because of their close relationship, in this section the FAA estimates ATP certificate and type rating testing costs concurrently. Far more costly, however, is the requirement (retained by the proposed rule) that an applicant for an ATP certificate have a minimum of 1,500 hours of flight time. A later section entitled, ''Cost of the ATP 1,500-hour Requirement'', will show the ATP 1,500-hour requirement to be orders of magnitude more costly than ATP testing costs. Table 4 below shows the cost factors for the ATP and aircraft type rating practical test.

TABLE 4—COST FACTORS FOR AN ATP CERTIFICATE/AIRCRAFT TYPE RATING

Cost factor	Rate	Unit
Ground school instructor	$33	per hour.
Simulator instructor	130	per hour.
Check Pilot	130	per hour.
Aircrew Program Designee (APD)	143	per hour.

[7] Very few pilots hold a type rating without also holding the ATP certificate.

TABLE 4—COST FACTORS FOR AN ATP CERTIFICATE/AIRCRAFT TYPE RATING—Continued

Cost factor	Rate	Unit
Level C or D simulator	2,000	4-hr event.
New hire training pay	1,302	per month.
SIC pilot pay	78	per hour.
Hotel	90	per day.
Per diem	45	per day.
ATP written test	150	per test.

Sources: 1. Pay rates incorporate a benefits factor of 1.302—Employee Benefit Research Institute, www.ebri.org (Benefit FAQs).
2. Other cost factors—Industry survey and FAA Flight Standards Service.

These cost factors are now used to estimate the cost per pilot, enabling the cost for all affected pilots to be estimated. The cost estimation per pilot differs considerably between current and new SICs, therefore they are estimated separately.

Cost of ATP Certificate/Aircraft Type Rating per Pilot—New Pilots

The FAA believes that the ATP practical test/aircraft type rating for new pilots would be conducted at the conclusion of initial training, so that the cost of the ATP/aircraft type rating for new pilots would be incremental to the initial training costs. Table 5 below shows the cost estimates per pilot for new pilots:

TABLE 5—INCREMENTAL COST OF AN ATP CERTIFICATE/AIRCRAFT TYPE RATING PER PILOT FOR NEW PILOTS

Item	Item cost
Level C or D simulator for flight training (4-hr event, 2 pilots—two hours each)	$1,000
Simulator instructor for flight training (4-hr event, 2 pilots)	260
Incremental cost of type rating/ATP ''Check ride'' (Incremental cost of APD)	52
Training pay & benefits (1 day)	43
Hotel (negotiated rate) (1 day)	90
Per diem (1 day)	45
ATP written test	150
Total	1,641

Note: Column sums may be off one or more units from totals owing to rounding.

As summarized in the table, the FAA estimates that after initial training, pilots need two additional hours of simulator training to be prepared to take the aircraft type rating check ride (practical test). The same check ride qualifies as the practical test for the ATP certificate so the pilots will qualify for both the aircraft type rating and an ATP certificate simultaneously. Since a check ride is already required during initial training, the incremental cost for the aircraft type rating/ATP check ride is just the incremental salary and benefits of the Aircrew Program Designee (APD) required to conduct an aircraft type rating or ATP practical test, compared to a check airman. The cost of the ATP written test is included here as it would be required for the ATP practical test.

Cost of an ATP Certificate/Aircraft Type Rating per Pilot for Current SICs

The FAA believes that the aircraft type rating for current SICs would be conducted most efficiently at the conclusion of recurrent training, so that the cost of type rating current SICs would be incremental to the cost of recurrent training. Table 6 below shows our cost estimates per pilot for current SICs:

TABLE 6—INCREMENTAL COST OF AN ATP CERTIFICATE/AIRCRAFT TYPE RATING PER PILOT FOR CURRENT PILOTS

Item	Item cost
Ground school instructor (2 days)	$26
Level C or D simulator for flight training (Two 4-hr events, 2 pilots—4 hours each)	2,000
Simulator instructor for flight training (Two 4-hr events, 2 pilots)	521
Incremental cost of Level C or D simulator for ''Check ride'' for type rating/ATP (4-hr event)	1,000
Incremental cost of type rating/ATP ''Check ride'' (Incremental cost of APD)	52
Pilot pay (four 4-hr negotiated ''training days'')	1,250
Hotel (4 days)	360
Per diem (4 days)	180
Total	5,389

Notes:
1. The FAA assumes ground school class sizes to average 20 pilots.
2. As the FAA anticipates that the aircraft type rating would be conducted at the conclusion of recurrent pilot training, there would be no incremental travel costs.

As summarized in the table, the FAA estimates that current SICs would need four hours of simulator training to be prepared for the aircraft type rating. The check ride for recurrent training is typically done with two pilots concurrently, whereas the aircraft type rating/ATP check ride is conducted with one pilot, so the incremental cost of a 4-hour simulator event is $2,000 − $1,000 = $1,000. The cost estimate does not include a charge for the ATP written exam as the number of current SICs without the ATP written test completed is estimated to be minimal.

Cost of an Aircraft Type Rating/ATP for New Part 121 Pilots, 2013–2032

Under current rules and practice, virtually all part 121 pilots eventually upgrade to PIC, a position for which an aircraft type rating and ATP certificate are required. On average this occurs 5 years into the pilot's career, often at a regional airline. Under the proposed rule, a new part 121 pilot will be required to have an aircraft type rating and an ATP certificate at the beginning of his or her career as SIC. Since the undiscounted costs are the same under the proposed rule as under the current rule, the incremental undiscounted cost attributable to the proposed rule is zero. Nevertheless, there is an incremental present value cost stemming from the fact that the costs of the aircraft type rating would be incurred 5 years earlier under the proposed rule.[8] This incremental cost may be expressed as follows: $C = PV_1 - PV_2$, where C is the incremental present value cost of the proposed rule; PV_1 is the present value cost of the requirement that new SICs have an aircraft type rating and an ATP certificate immediately upon entering into revenue service; and PV_2 is the present value cost of upgrading in year 5 under the existing rule. When the 20-year cost stream is discounted with the usual discount factors and summed, the FAA obtains PV_1 = $49.9 million, the present value cost under the proposed rule. When the 20-year cost stream is discounted by an additional 5 years, the FAA obtains the present value cost, PV_2 = $35.6 million. The incremental present value cost of the proposed aircraft type rating requirement can then be calculated as the increase in present value cost: $49.9 mil − $35.6 mil = $14.3 million.[9]

Cost of an ATP Certificate/Aircraft Type Rating for Current Part 121 Pilots, 2013–2032

First, the cost of an ATP certificate for all current pilots without an ATP certificate is calculated and then, independently, the cost for all current pilots without a type rating for the airplane flown to obtain an aircraft type rating is calculated. As already noted, the latter cost will be higher since there are fewer current pilots with a type rating than with an ATP certificate. The difference between the ATP certificate cost and the type rating cost will be the incremental cost of the proposed rule's type rating requirement for current pilots.

The total cost and present value estimates for current pilots for the estimation period, 2013–2032, are shown in Table 7 below:

Assumptions

7% Discount rate
0.6% Pilot growth rate
$5,389 Estimated incremental cost of an ATP certificate/aircraft type rating for current pilots
9,986 No. of SICs, 2010—regional airlines
29,594 No. of SICs, 2010—majors & cargo airlines
25.2% of SICs at regional airlines
85% of SICs without an ATP certificate—regionals
15% of SICs without an ATP certificate—majors & cargo airlines
90% of non-type rated SICs—regionals
30% of non-type rated SICs—majors & cargo airlines

TABLE 7—COST OF AN ATP CERTIFICATE/AIRCRAFT TYPE RATING FOR CURRENT PART 121 PILOTS

Year	Number of part 121 SICs	Number of current part 121 pilots w/o an ATP cert.	Total cost of an ATP cert.	PV Factor	PV Cost of an ATP cert.	PV Factor (2.5 yrs add'l discount)	PV Cost of ATP (2.5 yrs add'l discount)	Net PV Cost of an ATP
Cost of an ATP Certificate								
2013	40,177	13,161	$70,924,078	0.816	$57,895,174	0.689	$48,885,882	$12,413,978
Year	Number of part 121 SICs	Number of current part 121 pilots w/o an aircraft type rating	Total cost of an aircraft type rating	PV Factor	PV Cost of an aircraft type rating	PV Factor (2.5 yrs add'l discount)	PV Cost of type rating (2.5 yrs add'l discount)	Net PV Cost of type rating
Cost of a Type Rating								
2013	40,177	18,189	$98,018,226	0.816	$80,012,070	0.689	$67,560,999	$12,451,071

As noted previously, currently only PICs are required to hold an ATP certificate and an aircraft type rating for the airplane flown in revenue service. Based on information provided by industry, the FAA estimates that about 85% of the SICs for regional airlines and approximately 15% of the SICs of major and cargo airlines do not have an ATP certificate. The corresponding figures for an aircraft type rating are 90% and 30%. With the additional estimate of 25.2% of SICs at regional airlines, more than 13,000 current (2013) SICs do not have aircraft type ratings.[10] As Table 9

[8] The FAA believes that a small percentage of new SICs (less than 5%) may leave part 121 operations prior to upgrading to PIC. By not taking this potential attrition into account, the FAA's cost estimates for a type rating/ATP are understated by no more than $1.8 million in present value. A similar underestimation is made in the analysis for existing SICs who do not currently hold a type rating.

[9] Pilots will need one or more additional aircraft type ratings as they follow a typical career path from a regional airline to a major airline. However, the average number of years to upgrade for a major airline is more than 10 years, which added to an average 7-year regional airline career, is far into the future. The low cost of the initial aircraft type rating, combined with heavy discounting, indicates the cost of future additional aircraft type ratings is minimal.

[10] A small percentage of SICs also have not passed the ATP written exam. The estimated total cost for these pilots is minimal.

shows, we estimate $70.9 million to be the total cost to upgrade current SICs from commercial certificates to ATP certificates. (But, as in the case of new pilots, this is the total cost under both the current rule and the proposed rule, so the incremental total cost is zero.) When discounted with the usual discount factor, a present value cost of $57.9 million is calculated under the proposed rule. As in the case of new part 121 pilots, however, the incremental present value cost owing to the proposed requirement that pilots must have the ATP certificate immediately when in revenue service must be calculated. Because the FAA has no information on the time in part 121 service of current SICs without an ATP certificate, it is assumed that, on average, they have been in service for 2.5 years and have, on average, 2.5 additional years to serve as SICs before they would upgrade and be required, under current rules, to have an ATP certificate (and aircraft type rating). As the table shows, an additional 2.5 years is discounted to obtain the present value cost of $48.9 million under the current rule. The incremental PV cost of the earlier requirement for the aircraft type rating is then $57.9 − $48.9 = $9.0 million.

The analogous independent calculation for the type rating cost yields an incremental PV cost of the earlier requirement for a type rating to be 12.4 million. $12.4 − $9.0 = $3.4 million is then the incremental net present value cost of the proposed rule's requirement for a type rating in addition to the statute's requirement for an ATP certificate.

Cost of an ATP Certificate/Aircraft Type Rating for All Part 121 Pilots, 2013–2032

The table below summarizes the cost of an ATP certificate/aircraft type rating for new and current part 121 pilots:

TABLE 8—SUMMARY OF ATP CERTIFICATE/TYPE RATING COST FOR ALL PART 121 PILOTS, 2013–2032

	NPV Cost
ATP Cost—New Pilots	$14.3
ATP Cost —Current Pilots w/o ATP Certificate	9.0
Cost of ATP Requirement	23.3
Cost of Type Rating	3.4
Cost of ATP Certificate/Type Rating	26.7

Notes:

1. "Cost Current Pilots w/o ATP" is the cost of providing an ATP certificate (and type rating) to all current pilots with neither.

2. "Cost of Type Rating" is the cost of type rating pilots already holding an ATP certificate.

Estimated Cost of ATP 1,500–Hour Requirement

As previously noted following the Congressional mandate of the Act, the proposed rule requires all SICs in part 121 air carrier operations to have an ATP certificate by August 2, 2013. The FAA proposes to retain the current requirement that ATP holders have at least 1,500 hours of total time as a pilot, except for a newly created restricted privileges ATP certificate under which (1) pilots with military training would require only 750 hours of flight time and (2) pilots with an aviation-related bachelor degree, who also obtained their commercial pilot certificate with instrument rating from an affiliated part 141 pilot school, would require only 1,000 hours of flight time. Holders of a restricted privileges ATP certificate would be allowed to operate as SICs only in part 121 operations and would be required to be at least 21 years old and hold a first class medical certificate.

In this section the cost of the increase in flight time that the ATP certificate requirement will entail is estimated. Only the cost for new pilots is estimated, as, given the depressed hiring environment for pilots in 2009 and 2010, the number of pilots currently with less than 1,500 hours appears to be small [11], with corresponding minimal costs. For the future, the effect of the requirement would be to delay the careers of pilots in part 121 operations, so the cost of the increased flight hour requirement can be estimated by the reduced salary and benefits that the requirement engenders. From a social point of view, the reduced salary and benefits reflects the loss of pilot productivity the 1,500-hour restriction brings about by delaying the entrance of pilots into part 121 operations and, consequently, delaying their career path.

A common career path of a pilot in part 121 operations is to start out as an SIC (first officer) in a regional airline, upgrade to PIC (captain) at that airline and, subsequently, to become an SIC and a PIC at a major airline. Based on a survey of industry, the FAA estimates the career path of a ''typical'' pilot in part 121 operations as follows: Upgrade to regional airline PIC after five years, move to a position as SIC at a major airline after two years as PIC at the regional airline, and upgrade to PIC at the major airline after an additional ten years. Under current regulations, a pilot is eligible for part 121 operations with a commercial pilot's license, which requires just 250 hours of flight time.[12]

There is considerable cross-sectional variation in the hiring minimums of regional airlines, but the average total hours minimum appears to be about 750 hours. The number of flight hours the FAA assumes pilots can accumulate in one year is also about 750 hours. Accordingly, the FAA estimates that the proposed requirement for an ATP certificate with 1,500 hours of flight time would, on average, delay a new pilot's part 121 career approximately one year. As pilots with an aviation-related bachelor's degree, who also received their commercial pilot certificate with instrument rating from an affiliated part 141 pilot school, would be allowed to hold the restricted privileges ATP certificate with 1,000 hours, the FAA estimates that their careers will be delayed by only one-third of a year. The part 121 careers of Air Force, Navy, and Marine pilots appear not to be delayed by the proposed rule, as these pilots appear to typically have more than 1,500 hours of flight time when leaving the service, so they will be eligible for the unrestricted ATP certificate. Army pilots typically have at least 750 hours of flight time when leaving the military, so they will be immediately eligible for the restricted privileges ATP certificate under the proposed rule.

In order to calculate the cost of the ATP certificate 1,500-hour requirement, the FAA calculates the earnings and active benefits of a typical pilot in part 121 operations in a 35-year career and then calculates the loss in earnings and active benefits caused by the effect of the hours requirements in delaying that career. The regional airline earnings are estimated by averaging salary and active benefits data for Colgan Air and Mesa Airlines, as this provides a median estimate for the regional airlines included in a recent study.[13] The major airline earnings are estimated using salary and active benefits data for Delta Airlines as this was the median airline in the same study.[14] (Retirement benefits were not included as they greatly complicate the analysis with little effect on present value.) As pilots' salaries differ by type of airplane flown (as well as by airline), an average salary

[11] Industry survey. Confirmed by email from Kit Darby, President, *www.KitDarby.com,* Aviation Consulting, LLC, Peachtree City, GA, dated 12/18/2010.

[12] A graduate of a part 141 pilot school or a part 142 training center can obtain a commercial license with as few as 190 hours of flight time.

[13] *www.KitDarby.com* Aviation Consulting. U.S. Airline Pilot Job Market Overview. April 12, 2010. Peachtree City, Georgia.

[14] The active benefits factor for Colgan Airlines and Mesa Airlines is 1.233 and for Delta Airlines it is 1.15. Kit Darby Aviation Consulting, pp. 34–37.

for each airline was calculated as a weighted average using the number of aircraft of each type as weights. Hourly salary data by airline for 2008 were obtained from *www.airlinepilotcentral.com* and were converted to monthly figures by multiplying hourly salary by the airline's average credit hours per month.[15]

Based on a 35-year career, the FAA estimated the total cost of a one-year delay in a part 121 pilot's career to be $130,298, with a present value cost of $67,598.[16] The FAA estimated the total cost of a one-third year delay in a part 121 pilot's career to be $43,433, with a present value cost of $21,226.[17] In order to put these results on a basis comparable to the 20-year estimates of the other costs and of the estimated benefits of this proposed rule, the present value cost is annualized to $5,221 per year for a one-year delay and $1,639 per year for a one-third year delay. With these estimates, the FAA calculated the total cost of the ATP certificate 1,500-hour requirement for the estimation period 2013–2032. These calculations are shown in Table 11 of the initial regulatory evaluation.

As the table shows, the total cost of the ATP 1,500-hour requirement for the estimation period, 2013–2032, is about $1.6 billion, with present value cost of $558.7 million. Since the FAA requires 1,500 hours for an ATP certificate, and the requirement to hold an ATP certificate will take effect whether or not a regulation is issued, the costs associated with this provision are attributable to the statute, not this proposed regulation. The FAA further notes that this rulemaking contains a provision that would permit a pilot to obtain a restricted privileges ATP certificate at fewer than 1,500 hours. This allowance for a restricted privileges ATP certificate results in a reduction in the costs that would be incurred if the default provision of the public law went into effect without action by this Agency.

Benefits of This Proposed Rule

The FAA expects that this proposed rule would reduce the number of future accidents. The bulk of the benefits of the proposed rule, particularly with part 121 operations, would be the value of the averted fatalities and injuries. The value of averted fatalities and injuries is based on the value of a statistical life, which the Office of the Secretary of Transportation currently estimates to be $6 million.

Effectiveness of the FOQ Rule in Preventing Accidents

For the 10 fiscal years from 2001 to 2010, the FAA's Office of Accident Investigation and Prevention (AVP) compiled a list of all part 121 accidents and part 135 commuter and on-demand accidents over that period, along with the number of fatalities, the number of minor and serious injuries, aircraft model, and aircraft damage. From this list they determined the accidents that would have been affected by the proposed rule. AVP assessed that the package of requirements of the proposed rule would have had a likelihood of preventing some of these accidents. Based on NTSB accident reports, AVP assigned each accident a qualitative effectiveness rating and corresponding effectiveness score, which represents the likelihood that the proposed rule would have prevented the accident.[18] All scores were reviewed by a 3-person panel. The Initial Regulatory Evaluation contains a fuller discussion of accidents which may have been averted by the proposed rule and is available in the docket.

(23) The FAA is seeking comment on the effectiveness ratings for each of the accidents identified in Appendix 4 of the Initial Regulatory Evaluation, which is available in the docket.

Total Benefits of the Proposed Rule

Table 9 below shows the estimated cost of accidents that would have had some likelihood of being prevented had the proposed rule been in effect in the period 2001–2010, taking into account 30 part 135 accidents as well as the 31 part 121 accidents:

TABLE 9—ESTIMATED COST OF FOQ RULE-RELATED ACCIDENTS, FY 2001–2010

Operations	Number of accidents	Fatalities	Serious injuries	Minor injuries	Full cost of fatality/ injuries ($ mil.)	Full amt of AP dmge ($ mil.)	Full accident cost ($ mil.)	Wtd Ave. rule effective-ness ($ mil.)	Effective accident cost ($ mil.)
Part 121 ...	31	65	14	37	$409.2	$77.4	$486.6	0.344	$167.4
Part 135 ...	30	42	14	7	267.0	131.3	398.3	0.297	118.3
Total ..	61	107	28	44	676.2	208.7	884.9	0.323	285.8

Notes: Column sums may be off by one or more units from totals owing to rounding.

For the 61 accidents partially attributable to pilot qualification issues, over the 10-year sample period the FAA estimated the full accident cost to be $884.9 million. As the table shows, the weighted average effectiveness (weighting by full accident cost) for all accidents is 0.323. Multiplying this figure by the full accident cost yields the effective accident cost of $285.8 that the FAA estimated to be attributable to pilot qualification issues. Appendix 4 of the regulatory evaluation shows the calculations by individual accident.

The FAA assumed the chance of an accident is equally likely in any year of the 10-year estimation period, for an average effective cost of $28.58 million per year. Without the proposed rule, the FAA assumed that effective costs would grow at an annual rate of 3.5%, the FAA's forecast average annual growth rate for air carrier revenue passenger miles for the period, 2009–2030.[19] With

[15] Kit Darby Aviation Consulting, pp. 26–27.

[16] Estimating the cost of a one-year delay is straightforward. For the year of delay, the FAA assumed the pilot is accumulating hours at the rate of 750 hours/year as a commercial pilot. The FAA assumed the pilot will earn the same salary as a commercial pilot as he or she will in their first year as a regional airline SIC.

[17] To calculate the cost of a one-third year delay, the FAA assumed that delayed pilots are paid for ⅓ of a year as commercial pilot. All other cash flows are identical to those of the undelayed pilot, with the exception of the last year when the pilot retires at age 65 two-thirds of the way through the 35th pay year.

[18] Federal Aviation Administration. Office of Accident Investigation and Prevention. ''An Assessment of the Effectiveness of Public Law 111–216 in Reducing Accident Risk,'' November 22, 2010.

[19] U.S. DOT, FAA, Aviation Policy & Plans. FAA Aerospace Forecast: 2010–2030. Table 5, ''U.S. Commercial Air Carriers' Total Scheduled U.S. Passenger Traffic'', Revenue Passenger Miles, System [Domestic + Int'l], Avg Annual Growth, 2009–2030

the proposed rule, these projected costs become, as avoided costs, benefits of the proposed rule, which are shown for the estimation period, 2013–2032 in the Table 10 below.

7% Discount rate
3.5% Estimated annual growth rate in benefits
20 Number of years of estimation period
13.880 20-year growing annuity factor

TABLE 10—ESTIMATED BENEFITS OF PROPOSED RULE, 2013–2032

2013 Benefits ($ mil.)	Benefits, 2013–2032 ($ mil.)	20-yr growing annuity factor, discounted 2 years	Present value benefits, 2013–2032 ($ mil.)
$31.68	$896.0	12.12335	$384.1

As the table shows, estimated total benefits for the estimation period, 2013–2032 are almost $900 million. Multiplying the estimated $31.68 million in benefits for 2013 by the 20-year growing annuity factor, discounted 2 years, yields present value benefits of about $384 million.

The Number of Avoided Accidents and Avoided Fatalities

In this section the FAA calculated directly key primary variables underlying the expected benefits of the proposed rule—the number of accidents and the number of fatalities it expects the proposed rule to prevent. In Table 11, the FAA multiplied the sample number of part 121 and part 135 accidents (from Table 9) by their corresponding weighted average effectiveness rating to obtain the expected number of accidents and fatalities that would have been prevented had the proposed rule been in effect.[20]

TABLE 11—NUMBER OF ACCIDENTS AND FATALITIES PREVENTABLE BY PROPOSED RULE USING 2001–2010 SAMPLE PERIOD ACCIDENTS

Operations	Number of accidents	Fatalities	Weighted average effectiveness	Expected number of accidents avoided	Expected number of fatalities avoided
Part 121	31	65	0.344	10.7	22.4
Part 135	30	42	0.297	8.9	12.5
Total	61	107	0.323	19.7	34.6

Note: The sum of part 121 and part 135 accidents and fatalities avoided may not equal the ''Total'' number owing to the weighting scheme and/or rounding error.

In Table 12 the FAA used the average number of expected accidents and fatalities avoided per year from the Table 11 analysis to project the total number of accidents and fatalities that, with the proposed rule, would be prevented over the 20-year estimation period, 2013–2032. As with benefits, the FAA assumed the number of accidents and fatalities would grow at the annual rate of 3.5%. Table 12 shows that 61.3 is the number of accidents that would be prevented by the proposed rule over the 20-year period, 2013–2032 (33.4 for part 121 and 27.9 for part 135). For fatalities Table 12 shows that 109.2 is the number that would be prevented (70.1 for part 121 and 39.1 for part 135).

TABLE 12—NUMBER OF ACCIDENTS AND FATALITIES AVOIDED UNDER THE PROPOSED RULE, ESTIMATION PERIOD, 2013–2032

Year	Part 121 accidents avoided	Part 135 accidents avoided	Part 121 fatalities avoided	Part 135 fatalities avoided
2010	1.1	0.9	2.2	1.2
2011	1.1	0.9	2.3	1.3
2012	1.1	1.0	2.4	1.3
2013	1.2	1.0	2.5	1.4
2014	1.2	1.0	2.6	1.4
2015	1.3	1.1	2.7	1.5
2016	1.3	1.1	2.7	1.5
2017	1.4	1.1	2.8	1.6
2018	1.4	1.2	2.9	1.6
2019	1.5	1.2	3.0	1.7
2020	1.5	1.3	3.2	1.8
2021	1.6	1.3	3.3	1.8
2022	1.6	1.3	3.4	1.9
2023	1.7	1.4	3.5	2.0
2024	1.7	1.4	3.6	2.0

[20] What is calculated here is the ''effective'' number of accidents and fatalities avoided since the most costly accidents (or, equivalently, the most beneficial avoided accidents) have greater weight in determining weighted average effectiveness.

TABLE 12—NUMBER OF ACCIDENTS AND FATALITIES AVOIDED UNDER THE PROPOSED RULE, ESTIMATION PERIOD, 2013–2032—Continued

Year	Part 121 accidents avoided	Part 135 accidents avoided	Part 121 fatalities avoided	Part 135 fatalities avoided
2025	1.8	1.5	3.7	2.1
2026	1.8	1.5	3.9	2.2
2027	1.9	1.6	4.0	2.2
2028	2.0	1.7	4.2	2.3
2029	2.1	1.7	4.3	2.4
2030	2.1	1.8	4.5	2.5
2031	2.2	1.8	4.6	2.6
2032	2.3	1.9	4.8	2.7
Subtotal	33.4	27.9	70.1	39.1
Total		61.4		109.2

Note: Sums may not equal ''Subtotal'' or ''Total'' owing to rounding error.

Initial Regulatory Flexibility Determination

Introduction and Purpose of This Analysis

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes that this proposed rule would not have a significant impact on a substantial number of small entities for the following reason: The annualized cost of the proposed rule is less than 0.5% of operating revenues for all small firms that would be affected by the proposed rule.

Reasons Action by the FAA Is Being Considered

The purpose of this proposed rule is to meet pilot certification and qualification requirements imposed by Congress in Sections 216 and 217 of the Airline Safety and Federal Aviation Extension Act of 2010 (Pub. L. 111–216). This Act had its genesis in the crash of Colgan Air Flight 3407 that occurred in Buffalo, New York, on February 12, 2009, destroying the airplane, damaging residential homes, and resulting in 50 fatalities.

Objectives of, and Legal Basis for, the Proposed Rule

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 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 III, Section 447.

Description of the Small Entities to Which the Proposed Rule Will Apply and an Estimate of Their Number

The proposed rule would affect small firms in part 121, part 135, and part 91, subpart K, operations in the following North American Industry Classification System (NAICS) industries, which shows that the Small Business Administration (SBA) size standard is 1,500 employees for all four industries.[21] The SBA size standard is the largest size that a business (including its subsidiaries and affiliates) may be to remain classified as a small business for SBA.

[21] U.S. Small Business Administration. Table of Small Business Size Standards Matched to North American Industry Classification System Codes, July 21, 2006.

TABLE 13—SBA SIZE STANDARD FOR NAICS AIR TRANSPORTATION INDUSTRIES

NAICS Code	2002 U.S. NAICS Title	SBA Size standard
481111	Scheduled Passenger Air Transportation	1,500 employees.
481112	Scheduled Freight Air Transportation	1,500 employees.
481211	Nonscheduled Chartered Passenger Air Transportation	1,500 employees.
481212	Nonscheduled Chartered Freight Air Transportation	1,500 employees.

As the size standard is identical at 1500 employees for all four air transportation industries, the FAA does not attempt to classify each of the affected firms into one of these industries. The FAA identifies 93 part 121 air carrier operators, all of which would be affected by the proposed rule.

Using Department of Transportation employment data,[22] the FAA identified 32 part 121 operators as large and an identical number as small. The FAA identified 8 more part 121 operators as large, 7 as subsidiaries of a group with more than 1,500 employees and 1 known to be large (UPS). The FAA inferred 31 more operators to be small on the basis of pilot numbers. The largest small part 121 operator has 1,446 employees and 391 pilots, the largest number of pilots for any part 121 operator identified as small. In terms of pilot numbers, the largest operator that the FAA inferred to be small had 231 pilots. So in all, the FAA identified 40 of the part 121 operators as large and 53 as small.

The FAA had no corresponding employment data for part 135 and part 91, subpart K, operators. The largest part 135 operator, however, had just 55 PICs, so the FAA infers that all 1,106 part 135 operators are small. The FAA also identified seven of the eight part 91, subpart K, operators as small on the basis of pilot numbers, the largest part 91, subpart K, operator identified as small having 378 pilots.

Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule

Reporting and Recordkeeping Requirements

The proposed rule levies requirements that must be met by certificate holders who wish to offer or provide the ATP Certification Training Program. While requiring the gathering and maintaining of information and, in certain cases, the reporting of some of that information to the FAA, these sections require no additional burdens on the certificate holders beyond what is currently required by rule or that which is currently borne by certificate holders in regular practice. Exceptions to this are the following:

a. One time development and submission of an ATP Certification Training Program to the FAA for approval.

b. One time recordkeeping costs for pilot training records pertaining to completion of the ATP Certification Training Program.

Other Compliance Requirements

Consistent with the requirements of the Act and based on some of the recommendations of the First Officer Qualifications Aviation Rulemaking Committee (FOQ ARC), this proposed rule would require the following:

1. An ATP certificate for all pilots operating in part 121. The proposed requirement will retain the 1,500 hours total time as a pilot required for an ATP certificate but allow an ATP certificate with restricted privileges to be held by military pilots with 750 hours of flight experience and by baccalaureates from an aviation program who obtained their commercial pilot certificate with instrument rating from an affiliated part 141 pilot school and who have 1,000 hours of flight experience. The ATP with restricted privileges would allow a pilot to serve in part 121 air carrier operations as an SIC only. A first class medical certificate will remain the requirement for exercising the privileges of an ATP certificate (restricted or unrestricted). The minimum age for an ATP certificate with restricted privileges would be reduced to 21 years of age. The current requirement for an ATP certificate will remain at 23 years of age.

2. A minimum of 50 hours of multiengine (ME) flight experience. This requirement would apply not just to pilots serving in part 121 operations, but for all pilots who apply for an ATP certificate with an airplane category multiengine class rating. This would include PICs in part 135 air carrier operations that require the PIC to hold an ATP certificate, and PICs in part 91, subpart K, Fractional Ownership Programs, which require the PIC to hold an ATP certificate. The FOQ ARC also recommended 50 hours of multiengine time.

3. An ATP Certification Training Program for applicants for an ATP certificate with an airplane category multiengine class rating or type rating. The FOQ ARC made a similar proposal. This is a foundational course that the FAA believes should be required at the certification level to address the gap in aeronautical knowledge of a commercial pilot and the knowledge a pilot should have prior to entering an air carrier environment. The course would include academic study as well as simulator flight training, including training in difficult operational conditions. This requirement will necessitate changes in the ATP knowledge and practical tests. In addition to all pilots in part 121 operations, this requirement would apply to PICs in part 135 air carrier operations that require the PIC to hold an ATP certificate, and PICs in part 91, subpart K, Fractional Ownership Operations, which require the PIC to hold an ATP certificate.

4. An aircraft type rating for all SICs serving in part 121 operations. The FOQ ARC made the same recommendation. Current part 121 requirements require only the PIC to hold an aircraft type rating. The FAA has determined that this requirement would improve safety in part 121 operations by further exposing the pilot to an advanced multiengine aircraft and a multicrew environment. Also the training and testing for an aircraft type rating requires a pilot to be tested to the same standard as the PIC and demonstrate proficiency in difficult operational conditions, including adverse weather and high altitude operations.

5. A minimum of 1,000 hours in air carrier operations to serve as PIC in part 121 operations. An unintended consequence of the Act's requirement for all part 121 pilots to hold an ATP certificate is that the natural mentoring of SICs may not occur. The 1,000-hour requirement would ensure that a pilot would have at least one full year of relevant operational experience before upgrading to PIC. The FAA proposes to allow a pilot to count SIC time in part 121 operations as well as PIC time in part 135 operations and in part 91, subpart K, Fractional Ownership Operations, that require an ATP certificate per the operating rule part.

The FAA estimates that cost will be minimal for the requirement of 50 hours

[22] *www.bts.gov/programs/airline_information/number_of_employees/*

of ME time for the ATP with an airplane category multiengine class rating. As noted in the preamble above, multiengine hours are typically acquired while engaged in other commercial aviation activities such as flight instruction or part 135 air carrier operations on the way to obtaining the ATP. Airlines, currently post minimums for multiengine time from 50 hours to as much as 1,500 hours.[23]

The FAA also estimates as minimal the costs of the requirement that a part 121 SIC have 1,000 hours of air carrier operating experience before upgrade from SIC to PIC. According to a survey of industry, the average number of years to upgrade is about 5 years for operators which use regional jet airplanes and/or turboprop airplanes (hereafter referred to as regional airlines) and more than 10 years for major airlines. Even without air carrier operating experience in part 135 or part 91, subpart K operations, at an average number of 750 flight hours a year, an SIC will accumulate the required hours in 1⅓ years.

The table below summarizes the costs of the three remaining requirements:

TABLE 14—SUMMARY OF COSTS OF THE PROPOSED FOQ RULE—PART 121 OPERATORS 2013–2032

	Regional airlines		Major & cargo airlines	
	Total cost ($ mil.)	PV cost ($ mil.)	Total cost ($ mil.)	PV cost ($ mil.)
ATP Certification Training Program	104.2	46.1	292.3	129.4
ATP (Practical Test)	.....	9.5	.....	13.8
Type Rating	.....	1.7	.....	1.7
1500-Hour Flight Time Requirement	1,575.2	558.7	.....	.....
Total	1,679.4	616.1	292.3	145.0
Annualized Cost ($ Millions)	.....	58.2	.....	13.7

These costs represent 98% of the total costs and 97% of the present value costs of the rule, as the ATP Certification Training Program is the only one of the three requirements that affect part 135 and part 91, subpart K operators as well as part 121 operators. Costs are shown separately for regional airlines and all other airlines because of the strong differential impact on regional airlines.

Costs of the ATP Certification Training Program are conservatively allocated by the percentage of pilots employed by the regional airlines (26.3%, 2010) even though the FAA believes that the impact of the program will fall heavily on the regionals. The cost of the ATP practical test and type rating for new pilots is allocated on the same basis. For current pilots, the cost of the ATP practical test and type rating is calculated separately for the regionals and the major and cargo airlines because the regionals have high percentages of SICs without ATP certificates (85%) and type ratings (90%), whereas the major and cargo airlines have correspondingly low percentages (15%, 30%). The FAA allocates all of the costs of the ATP 1500-hour requirement to the regional airlines as almost all major and cargo airlines have currently (and traditionally) minimum hiring requirements of at least 1500 hours of flight time.[24]

Economic Impact on Small Entities

Table 14 shows the annualized cost of the proposed rule to be $58.2 million for regional airlines and $13.7 million for major and cargo airlines. (These costs include the costs of the 1500-hour requirement that we attribute to the statute, not the rule.) In order to assess the economic impact of the proposed rule on small firms, the FAA allocates these annualized costs to small firms on the basis of pilot numbers and calculate small firms' annualized costs as a percentage of the firms' average 5-year, 2005–2009 operating revenues.[25] Of the 31 regional airlines, 10 are classified as small, but the FAA has operating revenue data for only one small regional airline, the economic impact for which is just 0.43%. For the 36 non-regional small firms for which the FAA has operating revenue data, the economic impact ranges from 0.00% to 0.08%.

For part 135 operators, the FAA has operating revenue data for only three firms, but as measured by number of PICs they encompass almost the entire size range of these operators (4 to 45 PICs). The economic impact on these firms is zero to at least two decimal places (0.00%). Similar results could be expected for part 91, subpart K, operators were data available.

Based on these economic impact results, the FAA concludes that the proposed rule would not have a significant impact on a substantial number of firms. Therefore, the FAA certifies this proposed rule, if promulgated, would not have a significant impact on a substantial number of small entities. The FAA solicits comments regarding this determination. Specifically, the FAA requests comments on whether the proposed rule creates any specific compliance costs unique to small entities. Please provide detailed economic analysis to support any cost claims. The FAA also invites comments regarding other small entity concerns with respect to the proposed rule.

Duplicative, Overlapping or Conflicting Federal Rules

There are no current Federal rules that duplicate, overlap, or conflict with this proposed certification rule. The FAA acknowledges that there are concurrent rulemaking initiatives which involve pilot training that have some overlap. While this rule is a certification training rule, not a part 121 training rule, it does propose some aeronautical knowledge requirements for an ATP certificate that are also found in the proposed air carrier training requirements, which the FAA intends to allow for some relief in the air carrier training. The proposed ATP certification requirements have a broader scope and

[23] Kit Darby, President, *www.KitDarby.com,* Aviation Consulting, LLC, Peachtree City, GA.

[24] As noted in the earlier section entitled ''Total Costs and Benefits of This Proposed Rule'', the costs of the 1500-hour requirement are not costs of the proposed rule, but rather costs attributable to the Airline Safety Act of 2010 since the Act specifically requires the Administrator to maintain a minimum requirement of 1500 hours for an ATP certificate. The same point of course applies for the costs of the ATP test. Even including these costs in the regulatory flexibility analysis, however, we find that the impact of the proposed rule on small firms would be minimal.

[25] Operating Revenue—*www.transtat.bts.gov,* Air Carrier Financial Reports (Form 41 Financial Data), Schedules P1.1 & P1.2. We average for as many of the five years of data as is available.

applicability beyond those pilots who are flying only in air carrier operations. The concepts to be learned at the certification level will be a pilot's first exposure and will enable a knowledge base to be established. For those pilots that then choose to enter air carrier operations, the air carrier training program can focus on building on those concepts with information for their specific operation and aircraft type.

The proposed training rules referenced in the previous paragraph include a proposal to address pilot mentoring requirements required by Public Law 111–216 and an SNPRM for Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers that proposes to amend the training requirements for crewmember and aircraft dispatcher training programs in domestic, flag, and supplemental operations. The SNPRM incorporates specific training areas identified in Public Law 111–216 as well. The FAA acknowledges that the requirements for these proposals must be coordinated prior to the issuance of any final rules.

Alternatives to the Proposed Rule

The FAA considered a number of alternatives to come up with the best proposal that will improve safety, meet pilot certification and qualification requirements imposed by Congress in Sections 216 and 217 of the Airline Safety and Federal Aviation Extension Act of 2010 (Pub. L. 111–216), and be reasonable in cost. A discussion of the alternatives for each of the provisions follows.

Section 216 requires all pilots in part 121 operations to hold an ATP certificate. This requirement will go into effect in August 2013 regardless of FAA action and the FAA cannot change public law. Therefore, there are no alternatives to this requirement.

Section 216 also requires that all flightcrew members in part 121 operations to ''have appropriate multi-engine aircraft flight experience, as determined by the Administrator.'' Given the existing regulatory structure and the statutory requirement to revise the ATP certification requirements in Section 217, the FAA determined it was most appropriate to require a specific amount of time in class of airplane (single engine or multiengine) as a prerequisite to applying for an ATP certificate. The alternative would have been to impose an operational experience requirement for part 121. The FAA believes that 50 hours as a minimum is appropriate and not unreasonable when compared to the total time required of 1,500 hours. Any cost associated with this proposal would be minimal and would be borne by individual pilots rather than small entities.

In addition to the defined multiengine hour requirement in the proposal, the FAA proposes all SICs hold an aircraft type rating in the aircraft to be flown in part 121 operations. The FAA determined the most effective multiengine experience for a part 121 SIC would be the training required to achieve an aircraft type rating in the aircraft to be flown in revenue service. By requiring an aircraft type rating, the SIC would then be trained and checked in a multicrew air carrier environment to the same standard as the PIC. As noted above, the FAA anticipates that this provision would impose a minimal cost on all regulated entities.

In Section 217 of the Act, Congress directed the FAA ''to modify requirements for the issuance of an airline transport pilot certificate'' to ensure pilots have specific skills including the ability to ''function effectively in adverse weather conditions'' and ''function effectively in an air carrier operational environment.'' Currently, there are no training requirements for the ATP certificate. The public law allowed the FAA to consider academic training, flight training, or operational experience as a means of ensuring pilots have the identified skills. Given the existing regulatory structure and oversight capabilities, the FAA determined that validating operational experience would be overly burdensome on FAA inspectors and would require pilots to seek difficult operational conditions in an aircraft thereby increasing risk. Therefore, the FAA chose to do this by establishing training requirements for the ATP certificate, similar to those currently required for other airman certificates.

The FAA is proposing academic and flight training requirements and evaluation of the pilot on those requirements through an enhanced knowledge test and practical test. The FAA is proposing a structured ATP certification training program that includes training in FSTDs under parts 121, 135, 141, or 142 rather than permitting instruction to be accomplished by certified flight instructors (CFIs) under part 61. Typically CFIs do not have air carrier experience and are not required under current regulations to have the knowledge that teaching the required concepts demands. As such, the FAA would have to modify the requirements for CFIs in addition to modifying the ATP certificate requirements to enable CFIs to teach the proposed course.

The decision to propose the structured ATP Certification Training Program rather than permitting instruction to take place in actual aircraft under part 61 was also based on the fact that the areas identified in the public law are complex and involve difficult operational conditions including icing and high altitude operations. These complex environments are most safely trained through flight simulation. The FAA does not want pilots to seek potentially hazardous conditions in multiengine, multicrew aircraft just to obtain the experience requirements. In addition to the safety considerations, the FAA believes that the cost that would be incurred by pilots who received training from CFIs in part 61 would be prohibitively expensive due to the level of airplane that would be required for the training.

The program hours for the ATP Certification Training Program were based on an assessment of the quantity and complexity of the subject matter. The FAA considered as an alternative revising the areas of operation listed in part 61 for the ATP certificate and adding or modifying the questions on the ATP knowledge test to include the subject areas in the statute. While this is a less costly alternative, it does not capture the intent of the statute. The pilot would not be required to receive training in these critical areas and could likely get most, if not all, questions on those topic areas wrong and still pass the written test.

In addition, Section 217 of the Act permits the Administrator to allow ''specific academic training courses'' to be credited towards the 1,500-hour requirement for an ATP certificate if the FAA determines that the academic courses enhance safety more than full compliance with the total hour requirement for an ATP certificate. While the FAA had the option to not propose an allowance for academic credit towards the time required for an ATP certificate, the FAA believes a combination of training and flight experience is what makes a candidate qualified to fly in part 121 operations. The FAA chose to allow credit for academic coursework accomplished in the military and by students pursuing aviation-related majors at four-year colleges or universities. There are numerous alternate scenarios that could be considered here, including different levels of credit for academic coursework and expanding the credit beyond the military and four-year colleges and universities.

An applicant for an ATP certificate does not have to acquire any hours in

air carrier operations. Recognizing the potential loss of natural mentoring opportunities, the FAA proposed a requirement for a pilot to have at least 1,000 hours of air carrier experience prior to serving as PIC in part 121 operations. This provision is aimed at preventing two inexperienced pilots in air carrier operations from flying together in part 121 operations (e.g. PIC and SIC both have 1,500 hours and an ATP, but little experience in air carrier operations). The FAA could have chosen not to include this provision. As noted above, the FAA anticipates that this provision would impose a minimal cost on all regulated entities.

Initial Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that it would have only a domestic impact and therefore would not create unnecessary obstacles to the foreign commerce of the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $140.8 million.

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 308(c) and involves no extraordinary circumstances.

Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The FAA has determined that it is not a ''significant regulatory action'' under the executive order because while it is a ''significant regulatory action'' under Executive Order 12866, and DOT's Regulatory Policies and Procedures, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Additional Information

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The FAA also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

The FAA will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments we receive.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal Rulemaking Portal (*http://www.regulations.gov*);
2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies;* or
3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number or notice number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the Internet through the Federal Rulemaking Portal referenced in the **ADDRESSES** section.

List of Subjects

14 CFR Part 61

Aircraft, Airmen, Aviation safety.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety.

14 CFR Part 141

Airmen, Educational facilities.

14 CFR Part 142

Airmen, Educational facilities.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

2. Amend § 61.1 as follows:

A. Remove paragraph designations (b)(1) through (b)(19);

B. Add new definitions of *Accredited* and *Nationally recognized accrediting agency* to paragraph (b) in alphabetical order to read as set forth below;

C. Revise paragraph (iii) of the definition of *Authorized instructor* in paragraph (b) to read as set forth below;

The additions and revisions read as follows:

§ 61.1 Applicability and definitions.

* * * * *

(b) * * *

Accredited means the same as defined by the Department of Education in 34 CFR 600.2.

* * * * *

Authorized instructor means—

* * * * *

(iii) A person authorized by the Administrator to provide ground training or flight training under part 61, 121, 135, or 142 of this chapter when conducting ground training or flight training in accordance with that authority.

* * * * *

Nationally recognized accrediting agency means the same as defined by the Department of Education in 34 CFR 600.2.

* * * * *

3. Amend § 61.35 by removing the word ''and'' at the end of paragraph (a)(1), redesignating paragraph (a)(2) as paragraph (a)(3), and adding a new paragraph (a)(2) to read as follows:

§ 61.35 Knowledge test: Prerequisites and passing grades.

(a) * * *

(2) After July 31, 2013, for the knowledge test for an airline transport pilot certificate with an airplane category multiengine class rating or type rating, a certificate of completion for the ATP certification training program specified in § 61.154; and

* * * * *

4. Amend § 61.39 by revising paragraph (b) to read as follows:

§ 61.39 Prerequisites for practical tests.

* * * * *

(b) To be eligible for a practical test for an airline transport pilot certificate with an airplane category multiengine class rating or type rating issued under this part, an applicant must:

(1) After July 31, 2013, complete the ATP certification training program required by § 61.154;

(2) Pass the required knowledge test;

(i) For those applicants who pass the knowledge test prior to August 1, 2013, those knowledge test results will expire on July 31, 2015;

(ii) For those applicants who pass the knowledge test after completing the ATP certification training program, the knowledge test results will expire 60 calendar months after the knowledge test was successfully completed.

(3) Present the knowledge test report and, if applicable, the certificate of completion for the ATP certification training program in § 61.154, at the time of application for the practical test;

(4) Have satisfactorily accomplished the required training and obtained the aeronautical experience prescribed by this part for the certificate or rating sought;

(i) If applying for the practical test under the aeronautical experience requirements of § 61.160(a), the applicant must present the documents required by that section to substantiate eligibility;

(ii) If applying for the practical test under the aeronautical experience requirements of § 61.160(b), the applicant must present official transcripts from an accredited 4-year post secondary institution substantiating eligibility;

(5) Hold at least a third-class medical certificate, if a medical certificate is required;

(6) Meet the prescribed age requirement of this part for the issuance of the certificate or rating sought;

(7) If applying for a type rating to be concurrently completed with an airline transport pilot certificate, have the endorsement required by § 61.157(b) in the applicant's logbook or training record; and

(8) Have a completed and signed application form.

* * * * *

5. Amend § 61.55 by revising paragraph (a) introductory text and by removing the phrase ''part 121,'' from paragraph (e) introductory text to read as follows:

§ 61.55 Second-in-command qualifications.

(a) Except for pilots in part 121 operations after July 31, 2013, a person may serve as a second-in-command of an aircraft type certificated for more than one required pilot flight crewmember or in operations requiring a second-in-command pilot flight crewmember only if that person holds:

* * * * *

6. Amend § 61.57 by revising paragraph (e)(2) to read as follows:

§ 61.57 Recent flight experience: Pilot in command.

* * * * *

(e) * * *

(2) This section does not apply to a pilot in command who is employed by an air carrier certificated under part 121 or 135 and is engaged in a flight operation under part 91, 121, or 135 for that air carrier if the pilot is in compliance with §§ 121.435 or 121.436, as applicable, and § 121.439, or §§ 135.243 and 135.247 of this chapter, as appropriate.

* * * * *

7. Amend § 61.71 by redesignating paragraphs (b)(1) and (b)(2) as paragraphs (b)(2) and (b)(3), respectively, and by adding a new paragraph (b)(1) to read as follows:

§ 61.71 Graduates of an approved training program other than under this part: Special rules.

* * * * *

(b) * * *

(1) After July 31, 2013, satisfactorily completed the ATP certification training program specified in § 61.154.

* * * * *

8. Amend § 61.153 as follows:

A. Revise paragraph (a);

B. Redesignate paragraphs (e) through (h) as paragraphs (f) through (i); and

C. Add a new paragraph (e).

The addition and revisions read as follows:

§ 61.153 Eligibility requirements: General.

* * * * *

(a) Meet the following age requirements:

(1) For an ATP certificate obtained under the aeronautical experience requirements of § 61.159, be at least 23 years of age; or

(2) For an ATP certificate obtained under the aeronautical experience requirements of § 61.160, be at least 21 years of age.

* * * * *

(e) After July 31, 2013, for an airline transport pilot certificate with an airplane category multiengine class rating or type rating, receive a certificate of completion from an authorized training provider certifying completion of the ATP certification training program specified in § 61.154 before applying for the knowledge test required by paragraph (g) of this section;

* * * * *

9. Add § 61.154 to read as follows:

§ 61.154 ATP Certification training program: Airplane category—multiengine class rating or aircraft type rating.

After July 31, 2013, a person who applies for the knowledge test for an airline transport pilot certificate with an airplane category multiengine class rating or an aircraft type rating must

present a certificate of completion from an authorized training provider certifying the applicant has completed the following training in a course approved by the Administrator under part 121, 135, 141, or 142 of this chapter.

(a) *Academic training.* The applicant for the knowledge test must receive at least 24 hours of classroom instruction that includes the following:

(1) At least 5 hours of instruction on high altitude operations, including aerodynamics and physiology;

(2) At least 3 hours of instruction on meteorology, including adverse weather phenomena and weather radar; and

(3) At least 12 hours of instruction on air carrier operations, including turbine engines, transport category aircraft performance, automation, communications, checklist philosophy, and operational control.

(b) *FSTD Training.* The applicant for the knowledge test must receive at least 16 hours of training in a flight simulation training device qualified under part 60 of this chapter that represents a multiengine turbine airplane. The training must include the following:

(1) At least 8 hours of training in a Level C or higher full flight simulator on

(i) Low energy states/stalls;

(ii) Upset recovery techniques; and

(iii) Adverse weather conditions, including icing, thunderstorms, and crosswinds with gusts; and

(2) At least 8 hours of training in a Level 4 or higher flight training device or a full flight simulator on

(i) Aircraft performance;

(ii) Navigation;

(iii) Automation; and

(iv) Crew resource management.

10. Amend § 61.155 as follows:

A. Remove the word ''and'' after the semicolon in paragraph (c)(12);

B. Remove the period from the end of paragraph (c)(13) and add the phrase ''; and'' in its place; and

C. Add paragraphs (c)(14) and (d).

The additions read as follows:

§ 61.155 Aeronautical knowledge.

* * * * *

(c) * * *

(14) After July 31, 2013, for airplane category multiengine class rating or aircraft type rating, the approved training course in § 61.154.

(d) An applicant who successfully completes the knowledge test for an airline transport pilot certificate with an airplane category multiengine class rating or aircraft type rating prior to August 1, 2013, must successfully complete the practical test for that category and class by July 31, 2015. An applicant who passes the knowledge test prior to August 1, 2013, but fails to successfully complete the practical test by July 31, 2015, must complete the ATP certification training program specified in § 61.154 and retake the knowledge test prior to applying for the practical test.

11. Amend § 61.157 as follows:

A. Remove the word ''and'' from after the semicolon in paragraph (a)(2)(i);

B. Remove the period from the end of paragraph (a)(2)(ii) and add a semicolon in its place; and

C. Add paragraph (a)(2)(iii).

The addition reads as follows:

§ 61.157 Flight proficiency.

(a) * * *

(2) * * *

(iii) After July 31, 2013, if applying for an airplane category multiengine class rating or aircraft type rating, the training requirements of § 61.154.

* * * * *

12. Amend § 61.159 as follows:

A. Redesignate paragraphs (a)(3) through (a)(5) as paragraphs (a)(4) through (a)(6);

B. Add a new paragraph (a)(3);

C. Remove the phrase ''paragraph (a)(3)(ii)'' from newly redesignated paragraph (a)(4)(i) and add the phrase ''paragraph (a)(4)(ii)'' in its place; and

D. Remove the phrase ''paragraph (a)(3)'' from newly redesignated paragraph (a)(4)(ii) and add the phrase ''paragraph (a)(4)'' in its place.

The addition reads as follows

§ 61.159 Aeronautical experience: Airplane category rating.

(a) * * *

(3) 50 hours of flight time in the class of aircraft for which the rating is sought. An applicant may receive credit for not more than 10 hours in a full flight simulator that represents the class of airplane.

* * * * *

13. Add § 61.160 to read as follows:

§ 61.160 Aeronautical experience: Airplane category rating—restricted privileges.

A person may apply for an airline transport pilot certificate with an airplane category multiengine class rating if they meet the following aeronautical experience requirements.

(a) A person who meets the eligibility requirements of § 61.153 and presents the evidentiary documents described in § 61.73(h)(1), (2), and (3), may apply for an airline transport pilot certificate with a minimum of 750 hours of total time as a pilot that includes at least:

(1) 250 hours of cross-country flight time.

(2) 100 hours of night flight time.

(3) 50 hours of flight time in a multiengine airplane. An applicant may receive credit for not more than 10 hours in a simulator that represents a multiengine airplane.

(4) 75 hours of instrument flight time, in actual or simulated instrument conditions, subject to the following:

(i) Except as provided in paragraph (a)(4)(ii) of this section, an applicant may not receive credit for more than a total of 25 hours of simulated instrument time in a flight simulator or flight training device.

(ii) A maximum of 50 hours of training in a flight simulator or flight training device may be credited toward the instrument flight time requirements of paragraph (a)(4) of this section if the training was accomplished in a course conducted by a training center certificated under part 142 of this chapter.

(iii) Training in a flight simulator or flight training device must be accomplished in a flight simulator or flight training device representing an airplane.

(5) 250 hours of flight time in an airplane as a pilot in command, or as second in command performing the duties of pilot in command while under the supervision of a pilot in command, or any combination thereof, which includes at least—

(i) 100 hours of cross-country flight time; and

(ii) 25 hours of night flight time.

(6) Not more than 100 hours of the total aeronautical experience requirements of paragraph (a) of this section may be obtained in a flight simulator or flight training device that represents an airplane, provided the aeronautical experience was obtained in an approved course conducted by a training center certificated under part 142 of this chapter.

(b) A person who holds a Bachelor's degree with an aviation major from an accredited 4-year postsecondary institution, as defined in § 61.1, and holds a commercial pilot certificate with an airplane category and instrument rating obtained from an affiliated part 141 pilot school may apply for an airline transport pilot certificate with a minimum of 1,000 hours of total time as a pilot that includes at least:

(1) 325 hours of cross-country flight time.

(2) 100 hours of night flight time.

(3) 50 hours of flight time in a multiengine airplane. An applicant may receive credit for not more than 10 hours in a simulator that represents a multiengine airplane.

(4) 75 hours of instrument flight time, in actual or simulated instrument conditions, subject to the following:

(i) Except as provided in paragraph (a)(4)(ii) of this section, an applicant may not receive credit for more than a total of 25 hours of simulated instrument time in a flight simulator or flight training device.

(ii) A maximum of 50 hours of training in a flight simulator or flight training device may be credited toward the instrument flight time requirements of paragraph (a)(4) of this section if the training was accomplished in a course conducted by a training center certificated under part 142 of this chapter.

(iii) Training in a flight simulator or flight training device must be accomplished in a flight simulator or flight training device, representing an airplane.

(5) 250 hours of flight time in an airplane as a pilot in command, or as second in command performing the duties of pilot in command while under the supervision of a pilot in command, or any combination thereof, which includes at least—

(i) 100 hours of cross-country flight time; and

(ii) 25 hours of night flight time.

(6) Not more than 100 hours of the total aeronautical experience requirements of paragraph (a) of this section may be obtained in a flight simulator or flight training device that represents an airplane, provided the aeronautical experience was obtained in an approved course conducted by a training center certificated under part 142 of this chapter.

(c) A person who has performed at least 20 night takeoffs and landings to a full stop may substitute each additional night takeoff and landing to a full stop for 1 hour of night flight time to satisfy the requirements of paragraph (a)(2) of this section; however, not more than 25 hours of night flight time may be credited in this manner.

(d) An airline transport pilot certificate obtained under this section is subject to the pilot in command limitations set forth in § 61.168.

14. Amend § 61.165 as follows:

A. Revise paragraph (c)(2);

B. Redesignate paragraphs (c)(3) through (c)(5) as paragraphs (c)(4) through (c)(6);

C. Add new paragraph (c)(3);

D. Remove the phrase ''§ 61.159 of this part'' in newly redesignated paragraph (c)(5) and add the phrase ''§ 61.159 or § 61.160'' in its place;

E. Revise paragraph (e) introductory text and paragraph (e)(1);

F. Redesignate paragraph (f) as paragraph (g);

G. Add new paragraph (f);

H. Remove the phrase ''paragraphs (a) through (e)'' from newly redesignated paragraph (g) introductory text and add the phrase ''paragraphs (a) through (f)'' in its place; and

I. Remove the phrase ''paragraph (f)(1)'' from newly redesignated paragraph (g)(3) and add the phrase ''paragraph (g)(1)'' in its place.

The revisions and additions read as follows:

§ 61.165 Additional aircraft class category and ratings.

* * * * *

(c) * * *

(2) After July 31, 2013, successfully complete the ATP certification training program specified in § 61.154;

(3) Pass a knowledge test for an airplane category multiengine class rating or type rating on the aeronautical knowledge areas of § 61.155(c);

* * * * *

(e) *Additional class rating within the same aircraft category.* Except as provided in paragraph (f) of this section, a person applying for an airline transport pilot certificate with an additional class rating who holds an airline transport certificate in the same aircraft category must—

(1) Meet the eligibility requirements of § 61.153, except paragraph (g) of that section;

* * * * *

(f) Adding a multiengine class rating or type rating to an airline transport pilot certificate with a single engine class rating. A person applying to add a multiengine class rating or airplane type rating to an airline transport pilot certificate with an airplane category single engine class rating must—

(1) Meet the eligibility requirements of § 61.153;

(2) Pass a required knowledge test on the aeronautical knowledge areas of § 61.155(c), as applicable to multiengine airplanes;

(3) Comply with the requirements in § 61.157(b), if applicable;

(4) Meet the applicable aeronautical experience requirements of § 61.159; and

(5) Pass a practical test on the areas of operation of § 61.157(e)(2).

* * * * *

15. Amend § 61.167 by revising paragraph (b) introductory text to read as follows:

§ 61.167 Privileges.

* * * * *

(b) A person who holds an airline transport pilot certificate and has met the aeronautical experience requirements of § 61.159 of this part may instruct—

* * * * *

16. Add § 61.168 to read as follows:

§ 61.168 Limitations.

(a) A person who holds an airline transport pilot certificate and has not satisfied the age requirement of § 61.153(a)(1) and the aeronautical experience requirements of § 61.159 may not act as pilot in command in operations under § 91.1053(a)(2)(i) or § 135.243(a)(1) of this chapter, or in any operation conducted under part 121 of this chapter.

(b) An airline transport pilot certificate issued to a pilot who has not satisfied the requirements of § 61.159 must contain the following limitation, ''Restricted in accordance with 14 CFR 61.168(a)'' and ''Holder does not meet the pilot in command aeronautical experience requirements of ICAO.''

(c) The pilot is entitled to an airline transport pilot certificate without the limitation specified in paragraph (b) of this section when the applicant presents satisfactory evidence of having met the aeronautical experience requirements of § 61.159 and the age requirement of § 61.153(a)(1).

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

17. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105.2.

18. Amend § 121.403 by adding paragraph (c) to read as follows:

§ 121.403 Training program: Curriculum.

* * * * *

(c) Each certificate holder required to have a training program under this part may elect to provide the training required by § 61.154 of this chapter. If a certificate holder elects to provide the training in § 61.154, that training must take place prior to initial training.

19. Amend § 121.409 by revising paragraph (b) introductory text to read as follows:

§ 121.409 Training courses using airplane simulators and other training devices.

* * * * *

(b) Except for a training course approved to satisfy the requirements of § 61.154 of this chapter, a course of training in an airplane simulator may be included for use as provided in § 121.441 if that course—

* * * * *

20. Amend § 121.412 by revising paragraphs (c) introductory text and (f)

introductory text and by adding paragraph (h) to read as follows:

§ 121.412 Qualifications: Flight instructors (airplane) and flight instructors (simulator).

* * * * *

(c) Except as provided in paragraph (h) of this section, no certificate holder may use a person, nor may any person serve as a flight instructor (simulator) in a training program established under this subpart, unless, with respect to the airplane type involved, that person meets the provisions of paragraph (b) of this section, or—

* * * * *

(f) Except for a training course approved to satisfy the requirements of § 61.154 of this chapter, a flight instructor (simulator) must accomplish the following—

* * * * *

(h) A person providing instruction in a flight simulation training device in a course approved to satisfy the requirements of § 61.154 of this chapter must hold an airline transport pilot certificate with an airplane category multiengine class rating, meet the aeronautical experience requirements of § 61.159 of this chapter, and have at least 2 years of experience as a pilot in operations under § 91.1053(a)(2)(i) or § 135.243(a)(1) of this chapter, or in any operation conducted under part 121 of this chapter. Additionally, instructors must have an appropriate aircraft type rating for the aircraft that the FSTD represents or have received instruction from the certificate holder on any maneuvers or concepts they will demonstrate in the FSTD.

21. Amend § 121.414 by revising paragraph (a) introductory text to read as follows:

§ 121.414 Initial and transition training and checking requirements: Flight instructors (airplane), Flight instructors (simulator).

(a) Except for a training course approved to satisfy the requirements of § 61.154 of this chapter, no certificate holder may use a person nor may any person serve as a flight instructor unless—

* * * * *

22. Add § 121.435 to read as follows:

§ 121.435 Pilot qualification: Certificate and experience requirements.

(a) No pilot may act as pilot in command of an aircraft (or as second in command of an aircraft in a flag or supplemental operation that requires three or more pilots) unless he holds an airline transport pilot certificate and an appropriate type rating for that aircraft.

(b) No certificate holder may use nor may any pilot act as a pilot in a capacity other than those specified in paragraph (a) of this section unless the pilot holds at least a commercial pilot certificate with appropriate category and class ratings for the aircraft concerned, and an instrument rating. Notwithstanding the requirements of § 61.63 (b) and (c) of this chapter, a pilot who is currently employed by a certificate holder and meets applicable training requirements of subpart N of this part, and the proficiency check requirements of § 121.441, may be issued the appropriate category and class ratings by presenting proof of compliance with those requirements to a Flight Standards District Office.

(c) The requirements of this section will expire on July 31, 2013. After that date, the requirements of § 121.436 apply.

23. Add § 121.436 to read as follows:

§ 121.436 Pilot qualification: Certificates and experience requirements.

(a) No pilot may act as pilot in command of an aircraft unless he holds an airline transport pilot certificate, an appropriate aircraft type rating for the aircraft being flown, and has 1,000 hours as second in command in part 121 operations, pilot in command in operations under § 91.1053(a)(2)(i) or § 135.243(a)(1) of this chapter, or any combination thereof.

(b) No certificate holder may use nor may any pilot act as second in command unless the pilot holds an airline transport pilot certificate and an appropriate aircraft type rating for the aircraft being flown. A pilot type rating obtained under § 61.55 does not satisfy the requirements of this section.

(c) Compliance with the requirements of this section is required by August 1, 2013.

§ 121.437 [Removed]

24. Remove § 121.437.

Appendix H to Part 121 [Amended]

25. Amend Appendix H to Part 121 by removing the reference ''§ 61.153(g)'' from the last paragraph of the appendix and adding the reference ''§ 61.153(h)'' in its place.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSON ONBOARD SUCH AIRCRAFT

26. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 45101–45105.

27. Amend § 135.338 by revising paragraphs (b) introductory text, (c) introductory text, and (f) introductory text, and by adding paragraph (h) to read as follows:

§ 135.338 Qualifications: Flight instructors (aircraft) and flight instructors (simulator).

* * * * *

(b) Except as provided in paragraph (h) of this section, no certificate holder may use a person, nor may any person serve as a flight instructor (aircraft) in a training program established under this subpart unless, with respect to the type, class, or category aircraft involved, that person—

* * * * *

(c) Except as provided in paragraph (h) of this section, no certificate holder may use a person, nor may any person serve as a flight instructor (simulator) in a training program established under this subpart, unless, with respect to the type, class, or category aircraft involved, that person meets the provisions of paragraph (b) of this section, or—

* * * * *

(f) Except for a training course approved to satisfy the requirements of § 61.154 of this chapter, a flight instructor (simulator) must accomplish the following—

* * * * *

(h) A person providing instruction in a flight simulation training device in a course approved to satisfy the requirements of § 61.154 of this chapter must hold an airline transport pilot certificate with an airplane category multiengine class rating, meet the aeronautical experience requirements of § 61.159 of this chapter, and have at least 2 years of experience as a pilot in operations under § 91.1053(a)(2)(i) or § 135.243(a)(1) of this chapter, or in any operation conducted under part 121 of this chapter. Additionally, instructors must have an appropriate aircraft type rating for the aircraft that the FSTD represents or have received instruction from the certificate holder on any maneuvers or concepts they will demonstrate in the FSTD.

28. Amend § 135.340 by revising paragraph (a) introductory text to read as follows:

§ 135.340 Initial and transition training and checking: flight instructors (aircraft), flight instructors (simulator).

(a) Except for a training course approved to satisfy the requirements of § 61.154 of this chapter, no certificate holder may use a person nor may any person serve as a flight instructor unless—

* * * * *

29. Amend § 135.341 by adding a sentence to the end of paragraph (a), redesignating paragraphs (c) and (d) as

paragraphs (d) and (e), and adding new paragraph (c) to read as follows:

§ 135.341 Pilot and flight attendant crewmember training programs.

(a) * * * This deviation authority does not extend to the training provided under paragraph (c) of this section.

* * * * *

(c) Each certificate holder required to have a training program by paragraph (a) of this section may elect to provide the training required by § 61.154 of this chapter. If a certificate holder elects to provide the training in § 61.154, that training must take place prior to the training curriculums set forth in paragraph (b) of this section.

* * * * *

PART 141—PILOT SCHOOLS

30. The authority citation for part 141 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709, 44711, 45102–45103, 45301–45302.

31. Amend § 141.33 by adding paragraph (a)(4) to read as follows:

§ 141.33 Personnel.

(a) * * *

(4) For a training course approved by the Administrator to satisfy the requirements of § 61.154 of this chapter—

(i) Each instructor used for ground training must hold an airline transport pilot certificate with an airplane category multiengine class rating.

(ii) Each instructor used for training in a flight simulation training device must hold an airline transport pilot certificate with an airplane category multiengine class rating, meet the aeronautical experience requirements of § 61.159 of this chapter, and have at least 2 years of experience as a pilot in operations under § 91.1053(a)(2)(i) or § 135.243(a)(1) of this chapter, or in any operation conducted under part 121 of this chapter. Additionally, instructors must have an appropriate aircraft type rating for the aircraft that the FSTD represents or have received instruction from the certificate holder on any maneuvers or concepts they will demonstrate in the FSTD.

* * * * *

32. Amend Appendix E to part 141 by revising section 1 to read as follows:

Appendix E to Part 141—Airline Transport Pilot Certification Course

1. *Applicability.* (a) Except as provided in paragraph (b) of this section, this appendix prescribes the minimum curriculum for an airline transport pilot certification course under this part, for the following ratings:

(1) Airplane single-engine.

(2) Airplane multiengine.

(3) Rotorcraft helicopter.

(4) Powered-lift.

(b) In addition to the requirements set forth in this appendix, an applicant for an airline transport pilot certificate with airplane category multiengine class rating must also satisfy the training requirements of § 61.154 of this chapter.

* * * * *

PART 142—TRAINING CENTERS

33. The authority citation for part 142 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44703, 44705, 44707, 44709–44711, 45102–45103, 45301–45302.

34. Amend § 142.1 by revising paragraphs (a) and (b)(2) to read as follows:

§ 142.1 Applicability.

(a) This subpart prescribes the requirements governing the certification and operation of training centers. Except as provided in paragraph (b) of this section, this part provides an alternative means to accomplish training required by parts 61, 63, 65, 91, 121, 125, 135, or 137 of this chapter.

(b) * * *

(2) Approved under subpart Y of part 121 of this chapter, Advanced Qualification Programs, for the authorization holder's own employees;

* * * * *

35. Amend § 142.3 by revising paragraph (3) of the definition of *Course* and the definition of *Flight training equipment* to read as follows:

§ 142.3 Definitions.

* * * * *

Course means—

* * * * *

(3) A curriculum, or curriculum segment, as defined in subpart Y of part 121 of this chapter.

* * * * *

Flight training equipment means full flight simulators, as defined in § 1.1 of this chapter, flight training devices, as defined in § 1.1 of this chapter, and aircraft.

* * * * *

36. Amend § 142.47 as follows:

A. Redesignate paragraphs (a)(3) through (a)(5) as paragraphs (a)(4) through (a)(6);

B. Add new paragraph (a)(3);

C. Add the phrase ''of part 61'' after the words ''subpart H'' in newly redesignated paragraph (a)(4);

D. Remove the phrase ''paragraph (a)(5)(ii)'' from newly redesignated paragraph (a)(6)(i) and add in its place the phrase ''paragraphs (a)(6)(ii) and (a)(6)(iii)'';

E. Remove the phrase ''flight simulator or flight training device'' from newly redesignated paragraph (a)(6)(ii) and add in its place the phrase ''flight simulation training device (FSTD)'';

F. Revise newly redesignated paragraph (a)(6)(iii); and

G. Add paragraph (a)(6)(iv).

The additions and revision read as follows:

§ 142.47 Training center instructor eligibility requirements.

(a) * * *

(3) For a training course approved by the Administrator to satisfy the requirements of § 61.154 of this chapter, each instructor used for ground training must hold an airline transport pilot certificate with multiengine class rating.

* * * * *

(6) * * *

(iii) If instructing in an FSTD for a curriculum approved under § 61.154 of this chapter, holds an airline transport pilot certificate with an airplane category multiengine class rating, meets the aeronautical experience requirements of § 61.159 of this chapter, and has at least 2 years of experience as a pilot in operations under § 91.1053(a)(2)(i) or § 135.243(a)(1) of this chapter, or in any operation conducted under part 121 of this chapter. Additionally, instructors must have an appropriate aircraft type rating for the aircraft that the FSTD represents or have received instruction from the certificate holder on any maneuvers or concepts they will demonstrate in the FSTD; or

(iv) Is employed as an FSTD instructor for a training center providing instruction and testing to meet the requirements of part 61 of this chapter on August 1, 1996.

* * * * *

37. Amend § 142.49 by revising paragraph (c)(3)(iv) to read as follows:

§ 142.49 Training center instructor and evaluator privileges and limitations.

* * * * *

(c) * * *

(3) * * *

(iv) If instructing or evaluating in an aircraft in flight while serving as a required crewmember, holds at least a valid second class medical certificate; and

* * * * *

§ 142.55 [Amended]

38. Amend § 142.55 as follows:

A. In paragraph (a)(2), remove the phrase ''part 187'' and add in its place the phrase ''part 183''; and

B. In paragraph (d), remove the phrase ''SFAR 58'' and add in its place the

phrase ''subpart Y of part 121 of this chapter''.

Issued in Washington, DC, on February 22, 2012.

John W. McGraw,

Deputy Director, Flight Standards Service.

[FR Doc. 2012–4627 Filed 2–27–12; 4:15 pm]

BILLING CODE 4910–13–P

FEDERAL REGISTER

Vol. 77 Wednesday,

No. 40 February 29, 2012

Part III

Department of Transportation

Federal Railroad Administration

49 CFR Chapter II

Statement of Agency Policy and Interpretation on the Hours of Service Laws as Amended; Response to Public Comment; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Chapter II

[Docket No. 2009–0057, Notice No. 2]

Statement of Agency Policy and Interpretation on the Hours of Service Laws as Amended; Response to Public Comment

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Statement of agency policy and interpretation; response to public comment.

SUMMARY: In this document FRA states the agency's position on certain interpretive questions arising out of some of the complex and important amendments enacted in 2008 to the Federal railroad safety laws that govern such matters as how long a railroad may require or allow an employee in a certain category to remain on duty and how long the railroad must give the employee off duty before the employee may go on duty again. In issuing this interpretation, FRA has considered public comments that it received on its June 2009 document that contained the agency's interim interpretations of those amended laws.

DATES: This document is effective on May 29, 2012.

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8. May the railroad call to alert an employee to a delay (set back) or displacement?
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11. Is the additional rest required when on-duty time plus limbo time exceeds 12 hours (during which communication with an employee is prohibited) to be measured only in whole hours, so that the additional rest requirement is not a factor until the total reaches 13 hours?

B. Questions Related to the Requirements Applicable to Train Employees for 48 or 72 Hours Off at the Home Terminal

1. Is a ''Day'' a calendar day or a 24-hour period for the purposes of this provision?
2. If an employee is called for duty but does not work, has the employee initiated an on-duty period? If there is a call and release? What if the employee has reported?
3. Does deadheading from a duty assignment to the home terminal for final release on the 6th or 7th day count as a day that triggers the 48-hour or 72-hour rest period requirement?
4. Does attendance at a mandatory rules class or other mandatory activity that is not covered service but is non-covered service, count as initiating an on-duty period on a day?
5. If an employee is marked up (available for service) on an extra board for 6 days but only works 2 days out of the 6, is the 48-hour rest requirement triggered?
6. If an Employee initiates an on-duty period on 6 consecutive days, ending at an away-from-home terminal and then has 28 hours off at an away-from-home terminal, may the employee work back to the home terminal? The statute says that after initiating an on-duty period on 6 consecutive days the employee may work back to the home terminal on the 7th day and then must get 72 hours off, but what if the employee had a day off at the away-from-home terminal after the 6th day?
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C. Questions Related to the 276-Hour Monthly Maximum for Train Employees of Time on Duty, Waiting for or Being in Deadhead Transportation to Final Release, and in Other Mandatory Service for the Carrier

1. If an employee reaches or exceeds 276 hours for the calendar month during a trip that ends at the employee's away-from-home terminal, may the railroad deadhead the employee home during that month?
2. How will FRA apply the 276-hour cap to employees who only occasionally perform covered service as a train employee, but whose hours, when combined with their regular shifts in non-covered service, would exceed 276 hours?
3. Does the 276-hour count reset at midnight on the first day of a new month?
4. May an employee accept a call to report for duty when he or she knows there are not enough hours remaining in the employee's 276-hour monthly limitation to complete the assignment or the duty tour, and it is not the last day of the month, so the entire duty tour will be counted toward the total for the current month?
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1. Does the 30-hour monthly maximum limitation on time awaiting and in deadhead transportation to final release only apply to time awaiting and in deadhead transportation after 12 consecutive hours on duty?
2. Did the RSIA affect whether a railroad may obtain a waiver of the provisions of the new hours of service laws?

I. Executive Summary

Having considered public comments in response to FRA's June 26, 2009 interim statement of agency policy and interpretation (Interim Interpretations) and its proposed interpretation, 74 FR 30665, FRA issues this final statement of agency policy and interpretation.

Federal laws governing railroad employees' hours of service date back to 1907 with the enactment of the Hours of Service Act (Pub. L. 59–274, 34 Stat. 1415), and FRA, under delegations from the Secretary of Transportation (Secretary), has long administered statutory hours of service requirements for the three groups of employees now covered under the statute, namely employees performing the functions of train employees, signal employees, and dispatching service employees, as those terms are defined at 49 U.S.C. 21101. See 49 CFR 1.49; 49 U.S.C. 21101–21109, 21303. These requirements have been amended several times over the years, most recently in the Rail Safety Improvement Act of 2008 (Pub. L. 110–432, Div. A) (RSIA). The RSIA substantially amended the requirements of 49 U.S.C. 21103, applicable to train employees, defined as ''individual[s] engaged in or connected with the movement of a train, including a hostler,'' 49 U.S.C. 21101(5), and the requirements of 49 U.S.C. 21104, applicable to signal employees, defined as ''individual[s] who [are] engaged in installing, repairing, or maintaining signal systems.'' 49 U.S.C. 21101(4). FRA previously discussed these amendments in its Interim Interpretations, and now clarifies those interpretations and answers questions raised by commenters. The current hours of service laws are summarized very briefly below, divided by type of covered service.

Citation	Train employees 49 U.S.C. 21103	Signal employees 49 U.S.C. 21104	Dispatching service employees 49 U.S.C. 21105
Covered Individuals	Individuals engaged in or connected with the movement of a train, including hostlers. Train employees who are engaged in commuter or intercity rail passenger transportation, as defined in 49 CFR part 228, subpart F, are instead subject to that regulation. See 49 U.S.C. 21102(c)(3).	Individuals engaged in installing, repairing, or maintaining signal systems.	Operators, train dispatchers, or any other employee who by use of an electrical or mechanical device dispatches, reports, transmits, receives, or delivers orders related to or affecting train movements.
Limitations on Time on Duty in a Single Tour.	May not remain or go on duty in excess of 12 hours or if the employee has not had at least 10 consecutive hours off duty during the prior 24 hours.	May not remain or go on duty in excess of 12 hours or if the employee has not had at least 10 consecutive hours off duty during the prior 24 hours.	May not remain or go on duty for more than 9 or 12 hours in a 24-hour period, depending on the number of shifts employed at the tower, office, station, or place the employee is on duty.

Citation	Train employees 49 U.S.C. 21103	Signal employees 49 U.S.C. 21104	Dispatching service employees 49 U.S.C. 21105
Minimum Off-Duty Period Between Duty Tours.	10 consecutive hours, required to be uninterrupted by any communication by the railroad reasonably expected to disrupt the employee's rest. Additional time off duty is required when the total of time on duty and time waiting for deadhead transportation or in deadhead transportation from a duty assignment to the place of final release that is not time off duty exceeds 12 consecutive hours, which must also be uninterrupted.	10 consecutive hours, required to be uninterrupted by any communication by the railroad reasonably expected to disrupt the employee's rest.	Not applicable.
Minimum Off-Duty Period Within a Duty Tour.	At least 4 hours of time off duty at a designated terminal, required to be uninterrupted by any communication by the railroad reasonably expected to disrupt the employee's rest.	At least 30 minutes of time off duty	Not applicable.
Limitations on Consecutive Duty Tours.	May not remain or go on duty after initiating an on-duty period on six consecutive days without receiving 48 consecutive hours off duty and free from any service for any railroad carrier at the employee's home terminal. Employees are permitted to initiate a seventh consecutive day when the employee ends the sixth consecutive day at the away-from-home terminal, as part of a pilot project, or as part of a collectively bargained agreement entered into prior to April 16, 2010 that expressly provides for such a schedule. Employees performing service on this additional day must receive 72 consecutive hours free from any service for any railroad carrier at their home terminal before going on duty again as a train employee.	None	None.
Monthly Cumulative Limitations.	May not remain or go on duty, wait for or be in deadhead transportation to the point of final release, or be in any other mandatory service for the carrier in any calendar month where the employee has spent a total of 276 hours on duty, waiting for or in deadhead transportation from a duty assignment to the place of final release, or in any other mandatory service for the carrier. May not exceed a total of 30 hours per calendar month spent waiting for or in deadhead transportation from a duty assignment to the place of final release following a period of 12 consecutive hours on duty that is neither time on duty nor time off duty, not including interim rest periods, except in the circumstances stated.	None	None.
Time Neither On Duty nor Off Duty As Defined by the Statute.	Time spent in deadhead transportation from a duty assignment to the place of final release.	Time spent returning from a trouble call, whether the employee goes directly to the employee's residence or by way of the employee's headquarters.	None.

Citation	Train employees 49 U.S.C. 21103	Signal employees 49 U.S.C. 21104	Dispatching service employees 49 U.S.C. 21105
		Time after scheduled duty hours necessarily spent in completing the trip directly to the employee's residence or to the employee's headquarters, if the employee has not completed the trip from the final outlying worksite of the duty period at the end of scheduled duty hours, or if the employee is released from duty at an outlying worksite before the end of the employee's scheduled duty hours to comply with 49 U.S.C. 21104. However, time spent in transportation on an on-track vehicle is time on duty.	
Emergencies in General.	A train employee on the crew of a wreck or relief train may be allowed to remain or go on duty for no more than 4 additional hours in any period of 24 consecutive hours when an emergency exists and the work of the crew is related to the emergency.	A signal employee may be allowed to remain or go on duty for no more than 4 additional hours in any period of 24 consecutive hours when an emergency exists and the work of that employee is related to the emergency. Routine repairs, routine maintenance, or routine inspection of signal systems is not an emergency that allows for additional time on duty.	A dispatching service employee may be allowed to remain or go on duty for no more than 4 additional hours during a period of 24 consecutive hours for no more than 3 days during a period of 7 consecutive days.
End of Emergency	The emergency ends when the track is cleared and the railroad line is open for traffic.	The emergency ends when the signal system is restored to service.	Not Applicable.

In the proposed interpretation that appeared in the same document as the Interim Interpretations, FRA proposed a new interpretation of the new hours of service laws with respect to the 24-hour period within which a train employee or signal employee must have had the minimum 10-hour statutory off-duty period before the employee is allowed to go on duty or remain on duty. This proposed interpretation would have required that the train employee or signal employee have had the statutory minimum off-duty period in the 24 hours preceding any moment during which that employee is on duty, making the maximum work window 14 hours after the end of the statutory minimum off-duty period. In this final statement of agency policy, FRA rejects the proposed interpretation and maintains the longstanding ''fresh start'' interpretation, which requires only that the statutory minimum off-duty period be within the 24 hours before a train employee or signal employee initiates an on-duty period. As a result, there will be no change to the current interpretation that the statutory minimum off-duty period must only be within the 24 hours prior to the time when an employee initiates an on-duty period.

The other issues addressed by FRA largely fall into three categories: questions relating to the ''consecutive-days'' limitation, the prohibition on communication with train employees and signal employees during their statutory minimum off-duty periods, and the monthly limitation for train employees of 276 hours in time on duty, waiting for or in deadhead transportation, or performing any other mandatory service for the railroad carrier. Each issue is discussed in significantly more detail in the subsequent sections of this document; this summary provides only a brief overview of FRA's policy and interpretation.

In the Interim Interpretations, FRA defined the ''day'' in the consecutive-days limitation to be a calendar day, on the basis that such an interpretation would be administratively simpler. Experience with the application of this definition and public comments on the definition show that the ''calendar day'' interpretation was more complicated and provided less protection against fatigue than originally anticipated; as a result, FRA has revised its interpretation of ''day'' in the context of the ''consecutive-days'' limitation to refer to the 24-hour period following an employee's final release from duty. Under this interpretation, if an employee does not initiate an on-duty period within 24 hours of the employee's final release from the previous duty tour, this will count as a ''day'' in which the employee did not initiate an on-duty period, and the string of consecutive days will be broken.

Another source of confusion in the Interim Interpretations was FRA's definition of ''work'' in the ''consecutive-days'' limitation's allowance that an employee may ''work'' on a seventh consecutive day in certain circumstances. FRA has revised this interpretation to reduce confusion by clearly stating that ''work'' for the ''consecutive-days'' limitation is equivalent to ''initiate an on-duty period.'' This earlier definition of ''work'' also led some commenters to be confused about how stand-alone deadhead transportation would be treated with respect to the initiation of an on-duty period; FRA has clarified that a stand-alone deadhead is not time on duty, and is therefore not the initiation of an on-duty period. Therefore, a day in which an employee is in deadhead transportation but does not engage in any covered service with which the deadhead can commingle will not be counted as part of the series of consecutive days, and will break that series.

Similarly, if an employee is called to report for duty, but does not actually report for duty, such an employee has not initiated an on-duty period for the purposes of the consecutive-days

limitation. However, employees that do report for duty have initiated an on-duty period, even if they are released from duty shortly thereafter, before performing any covered service. FRA also clarifies that, while other service for the railroad may not be time on duty if it does not commingle with covered service, this fact does not prevent commingling if the other service is not separated from the covered service by a statutory minimum off-duty period. In response to a question relating to the interaction between the ''6-day'' limitation and the ''7-day'' limitation, FRA notes that an employee who is eligible to initiate an on-duty period for 7 consecutive days but only initiates an on-duty period on 6 consecutive days must have 48 hours of time off duty and free from any service for any railroad. FRA also provides clarification on the impact of the consecutive-days limitations on employees who choose to work for multiple railroads. Finally, in response to a question in the comments, FRA provides additional discussion of when an employee may be subject to individual liability enforcement action for deliberately misrepresenting his or her availability.

On the issue of the prohibition on communication by the railroad with train employees and signal employees, comments received in response to the Interim Interpretations indicated significant confusion over the period of time during which the prohibition applies. FRA explains that, because the prohibition applies only to certain off-duty periods such as the statutory minimum off-duty period, railroads are free to communicate with train employees and signal employees so long as there is sufficient undisturbed time off duty to complete the appropriate type of off-duty period. Similarly, because the prohibition only applies to certain off-duty periods, a violation of the prohibition does not occur unless a disruptive communication prevents an employee from having sufficient rest to avoid excess service. For example, if a railroad interrupted an employee's rest, but restarted the rest period and provided a full statutory off-duty period after the interruption before the employee was next called to report for duty, there would be no violation, because the employee had 10 hours uninterrupted rest between duty tours. Comments also indicated the tension between the Interim Interpretations addressing an employee's ability to contact the railroad and establishing a time to report during a statutory minimum off-duty period. FRA has resolved this issue by clearly stating that employees may call a railroad or contractor for any purpose during rest periods required to be free from disruptive communication, including establishing a time to report, while preserving the longstanding interpretation that some types of conversations are service for the railroad that would not be time off duty.

On a related topic, comments requested that employees be able to give advance permission to railroads to communicate during the prohibited time, such that employees would only need to allow communications once for all of their applicable off-duty periods. However, railroads and contractors are only permitted to contact employees during the prohibited times if the employee contacts the railroad or contractor during the prohibited time and specifically permits a return contact. Employees are not permitted to grant advance permission for all off-duty periods; a communication from an employee to a railroad or contractor applies only to the off-duty period in which the communication was made. Because the prohibition applies to ''communication,'' and not phone calls specifically, the prohibition applies to all forms of communication. However, because employees are permitted to initiate a communication, means of providing information that can be accessed at the employee's option, such as a railroad Web site or messages sent to a railroad-provided phone, do not violate the prohibition so long as employees have the option of whether or not to check for such messages.

FRA also received several questions concerning the 276-hour monthly limit on service for the railroad by train employees. Most of these questions discussed FRA's note that activities that an employee has the freedom to schedule, such as an appointment the employee makes for a vision exam, will not count towards the 276-hour limitation. This does not mean that time spent in such activities, which can also include activities like optional rules refresher classes or the acquisition of security access cards for hazardous materials facilities, no longer commingle with time on duty. FRA clarifies that if these activities are not separated from time on duty by a statutory minimum off-duty period, the time spent in these activities will commingle, become time on duty, and count toward the monthly limitation. FRA also explains that the 276-hour monthly limitation applies only to single railroads, such that an employee who chooses to work for multiple railroads will be subject to separate 276-hour limitations for each railroad. Finally, FRA reiterates that merely reporting for duty is not an act of deliberately misrepresenting availability that would make an employee subject to individual liability for violations of the hours of service laws.

In addition to these topics, FRA also addresses several miscellaneous issues raised by commenters. This includes a discussion of the function-based interpretation of which employees are covered by the hours of service laws. As has long been the case, only employees who perform the functions described in the ''definitions'' section of the hours of service laws, 49 U.S.C. 21101, are covered under the hours of service laws. This may or may not include employees who are described as ''yardmasters'' or ''mechanical employees.'' FRA also maintains the longstanding interpretation that time spent commuting is time off duty, and accordingly an employee may commute during the uninterrupted rest period. One commenter asked if the statutory exceptions to the time counted towards the monthly limitation on limbo time apply to the requirement that an employee receive additional time off after exceeding 12 hours of time on duty and time waiting for or in deadhead transportation; because these exceptions explicitly state that they only apply to the monthly limit, the exceptions do not also apply to the additional rest requirement. Thus, an employee will still be required to receive additional rest, even if one of the exceptions to the monthly limitation occurred during the employee's duty tour and that situation may have contributed to extending the duty tour which resulted in the need for additional rest.

With respect to signal employees, FRA explains the application of the exclusivity provision; because it applies only to signal employees, and signal employees are covered by the ''signal employee'' provision of the hours of service laws (including the exclusivity provision), only an employee who is subject to FRA's hours of service laws is not subject to the Federal Motor Carrier Safety Administration's (FMCSA) hours of service regulations during the same duty tour as a result of the exclusivity provision. An individual who does not work as a signal employee during a particular duty tour may instead be subject to the FMCSA hours of service regulations during that tour if he or she performs functions covered by those regulations, such as driving a commercial motor vehicle.

Finally, the Interim Interpretations are reprinted for ease of reference. Where the interpretation has changed, the text has been replaced with a reference to

where in this document the new answer can be found.

II. Background

On October 16, 2008, the Rail Safety Improvement Act of 2008 (RSIA) was enacted. See Public Law 110–432, Div. A, 122 Stat. 4848. Section (Sec.) 108 of the RSIA made important changes to 49 U.S.C. ch. 211, Hours of service, as amended through October 15, 2008 (the old hours of service laws). See 122 Stat. 4860–4866. Some of these changes became effective immediately on the date of enactment, and others became effective nine months later, on July 16, 2009. In particular, under Sec. 108(g) of the RSIA, subsections (d), (e), (f), and (g) of the section became effective on the date of enactment of the RSIA, and subsections (a), (b), and (c) of the section became effective nine months later, on July 16, 2009. Because of the significance of the amendments to the old hours of service laws made by Sec. 108, on June 26, 2009, FRA published an interim statement of agency policy and interpretation (Interim Interpretations) to address questions of statutory interpretation that had arisen so far with respect to the hours of service laws as amended by the RSIA (the new hours of service laws). 74 FR 30665 (June 26, 2009). In the same document, FRA also proposed a new interpretation of the new hours of service laws with respect to the 24-hour period within which a train employee or signal employee must have had the minimum statutory off-duty period before the employee is allowed to go on duty or remain on duty (Proposed Interpretation).

As with the Interim Interpretations, FRA is not addressing the amendments to the old hours of service laws made by Sec. 420 of the RSIA, which changed 49 U.S.C. 21106, Limitations on employee sleeping quarters, effective October 16, 2008. See 76 FR 67073 (Oct. 31, 2011). Nor is FRA presently revising either appendix A of 49 CFR part 228, which contains FRA's previously published interpretations of the old hours of service laws, known until the 1994 recodification as the Hours of Service Act (see Pub. L. 103–272), nor FRA's previously published interpretations concerning the limitations on hours of service of individuals engaged in installing, repairing or maintaining signal systems, an interim statement of agency policy and interpretation at 42 FR 4464 (Jan. 25, 1977). FRA plans to make conforming changes and other changes to 49 CFR part 228, appendix A, and to previously existing technical bulletins, in the future.

III. Changes in the Old Hours of Service Laws Made by Sec. 108 of the RSIA

A. Extending Hours of Service Protections to Employees of Contractors and Subcontractors to Railroads Who Perform Certain Signal-Related Functions

Sec. 108(a) of the RSIA (Sec. 108(a)) amended the definition of ''signal employee'', to eliminate the words ''employed by a railroad carrier''. 49 U.S.C. 21101(4). With this amendment, employees of contractors or subcontractors to a railroad who are engaged in installing, repairing, or maintaining signal systems (the functions within the definition of signal employee in the old hours of service laws) are covered by the new hours of service laws, because a signal employee under the new hours of service laws is no longer by definition only a railroad employee.

It should be noted that an employee of a contractor or subcontractor to a railroad who is ''engaged in or connected with the movement of a train'' was considered a ''train employee'' under the old hours of service laws and continues to be considered a train employee under the new hours of service laws. 49 U.S.C. 21101(5). Likewise, an employee of a contractor or subcontractor to a railroad who ''by the use of an electrical or mechanical device dispatches, reports, transmits, receives, or delivers orders related to or affecting train movements'' was considered a ''dispatching service employee'' under the old hours of service laws and continues to be considered a ''dispatching service employee'' under the new hours of service laws. 49 U.S.C. 21101(2).

B. Changing Hours of Service Requirements Related to Train Employees

Sec. 108(b) amended the old hours of service requirements for train employees in many ways, all of which amendments became effective July 16, 2009, except with respect to train employees providing commuter or intercity passenger rail service, whom Sec. 108(d) made subject initially to the old hours of service laws and then to regulations promulgated by FRA if issued timely, and, if not, to the new hours of service laws. 49 U.S.C. 21103 and 21102.[1] Sec. 108(b) limited train employees to 276 hours of time on-duty, awaiting or in deadhead transportation from a duty assignment to the place of final release, or in any other mandatory service for the carrier per calendar month. 49 U.S.C. 21103(a)(1). The provision retained the existing maximum of 12 consecutive hours on duty, but increased the minimum off-duty period to 10 consecutive hours during the prior 24-hour period. 49 U.S.C. 21103(a)(2), (3).

Sec. 108(b) also required that after an employee initiates an on-duty period each day for six consecutive days, the employee must receive at least 48 consecutive hours off duty at the employee's home terminal, during which the employee is unavailable for any service for any railroad; except that if the sixth on-duty period ends at a location other than the home terminal, the employee may initiate an on-duty period for a seventh consecutive day in order to reach the employee's home terminal, but must then receive at least 72 consecutive hours off duty at the employee's home terminal, during which time the employee is unavailable for any service for any railroad. 49 U.S.C. 21103(a)(4).

Sec. 108(b) further provided that employees may also initiate an on-duty period for a seventh consecutive day and must then receive 72 consecutive hours off duty if, for a period of 18 months after the enactment of the RSIA, such schedules are expressly provided for in an existing collective bargaining agreement, or after that 18-month period has ended, such schedules are expressly provided for by a collective bargaining agreement entered into during that period, or a pilot program that is either authorized by collective bargaining agreement, or related to work rest cycles under the hours of service laws at 49 U.S.C. 21108 (Sec. 21108). 49 U.S.C. 21103(a)(4).

Sec. 108(b) also provided that the Secretary may waive the requirements of 48 and 72 consecutive hours off duty if the procedures of 49 U.S.C. 20103 are followed (i.e., essentially, if public notice and an opportunity for an oral presentation are provided prior to issuing the waiver), if a collective bargaining agreement provides a different arrangement that the Secretary determines is in the public interest and consistent with safety. *Id.*

Sec. 108(b) also significantly changed the old hours of service requirements for train employees by establishing for the first time a limitation on the amount of time an employee may spend awaiting and in deadhead transportation. 49 U.S.C. 21103(c)(1). In particular, it provided that a railroad may not require or allow an employee to exceed 40 hours per month awaiting and in

[1] FRA has promulgated regulations effective October 15, 2011 establishing hours of service requirements for train employees providing commuter or intercity passenger rail service. 76 FR 50360 (August 12, 2011).

deadhead transportation from duty that is neither time on duty nor time off duty from the July 16, 2009 effective date of the provision through October 15, 2009,[2] with that number decreasing to 30 hours per employee per month beginning October 16, 2009, except in certain situations. These monthly limits do not apply if the train carrying the employee is directly delayed by casualty, accident, act of God, derailment, major equipment failure that keeps the train from moving forward, or other delay from unforeseeable cause. 49 U.S.C. 21103(c)(2). Railroads are required to report to the Secretary all instances in which these limitations are exceeded. 49 U.S.C. 21103(c)(3). See also 49 CFR 228.19. In addition, the railroad is required to provide the train employee with additional time off duty equal to the amount that the combination of the total time on duty and time spent awaiting or in transportation to final release exceeds 12 hours for a particular duty tour. 49 U.S.C. 21103(c)(4).

Finally, Sec. 108(b) restricted railroads' communication with their train employees, except in case of emergency, during the minimum statutory 10-hour off-duty period, statutory periods of interim release, and periods of additional rest required equal to the amount that combined on-duty time and time awaiting or in transportation to final release exceeds 12 hours. 49 U.S.C. 21103(e). Further, the Secretary may waive this provision for train employees of commuter or intercity passenger railroads if the Secretary determines that a waiver would not reduce safety and is necessary to efficiency and on time performance. *Id.* However, because train employees of commuter and intercity passenger railroads are no longer subject to the statutory hours of service limitations, such waivers are no longer applicable to these employees.

As was alluded to earlier, Sec. 108(d) provided that the requirements described above for train employees did not go into effect on July 16, 2009, for train employees of commuter and intercity passenger railroads. 49 U.S.C. 21102(c). Sec. 108(d) provided the Secretary with the authority to issue hours of service rules and orders applicable to these train employees, which may be different than the statute applied to other train employees. 49 U.S.C. 21109(b). Sec. 108(d) further provided that these train employees who provide commuter or intercity passenger rail service would continue to be governed by the old hours of service laws (as they existed immediately prior to the enactment of the RSIA) until the effective date of regulations promulgated by the Secretary. 49 U.S.C. 21102(c). If no new regulations had been promulgated before October 16, 2011, the provisions of Sec. 108(b) would have been extended to these employees at that time. *Id.* Such regulations have since been timely promulgated, 76 FR 50360 (August 12, 2011), to be codified at 49 CFR part 228, subpart F, with an effective date of October 15, 2011. Accordingly, the hours of service of train employees who provide commuter and intercity passenger rail service are not governed by the statutory hours of service laws at 49 U.S.C. 21103, but by those regulations.

C. Changing Hours of Service Requirements Related to Signal Employees

Sec. 108(c) amended the hours of service requirements for signal employees in a number of ways. 49 U.S.C. 21104. As was noted above, by amending the definition of ''signal employee,'' Sec. 108(a) extended the reach of the substantive requirements of Sec. 108(c) to a contractor or subcontractor to a railroad carrier and its officers and agents. 49 U.S.C. 21101(4). In addition, as Sec. 108(b) did for train employees, Sec. 108(c) retained for signal employees the existing maximum of 12 consecutive hours on duty, but increased the minimum off-duty period to 10 consecutive hours during the prior 24-hour period. 49 U.S.C. 21104(a)(1), (2). Further, Sec. 108(c) deleted the prohibition in the old hours of service laws at 49 U.S.C. 21104(a)(2)(C) against requiring or allowing a signal employee to remain or go on duty ''after that employee has been on duty a total of 12 hours during a 24-hour period, or after the end of that 24-hour period, whichever occurs first, until that employee has had at least 8 consecutive hours off duty.''

Sec. 108(c) also eliminated language in the old hours of service laws stating that the last hour of signal employee's return from final trouble call was time off duty, and defined ''emergency situations'' in which the new hours of service laws permit signal employees to work additional hours to exclude routine repairs, maintenance, or inspection. 49 U.S.C. 21104(b), (c).

Sec. 108(c) also contained language virtually identical to that in Sec. 108(b) for train employees, prohibiting railroad communication with signal employees during off-duty periods except for in an emergency situation. 49 U.S.C. 21104(d).

Finally, Sec. 108(c) provided that the hours of service, duty hours, and rest periods of signal employees are governed exclusively by the new hours of service laws, and that signal employees operating motor vehicles are not subject to other hours of service, duty hours, or rest period rules besides FRA's. 49 U.S.C. 21104(e).

The requirements of the old hours of service laws for dispatching service employees (49 U.S.C. 21105) were not modified by the RSIA.

IV. Response to Public Comments on FRA's Proposed Interpretation and Interim Interpretations

FRA received 62 sets of comments addressing either the proposed interpretation or the Interim Interpretations, or both, from the representatives of a total of nine organizations and from 45 individuals, with some individuals and organizations filing multiple sets of comments. The groups that submitted comments were as follows: the American Public Transportation Association (APTA); the Association of American Railroads (AAR); the Brotherhood of Railroad Signalmen (BRS); the Brotherhood of Locomotive Engineers and Trainmen (BLET); the United Transportation Union (UTU); the Nevada and Georgia State Legislative Boards of the BLET; and the Tennessee and Nebraska State boards of the UTU.

A. FRA's Decision To Retain its Longstanding ''Fresh Start'' Interpretation and Not To Adopt the Proposed ''Continuous Lookback'' Interpretation

In the **Federal Register** document that included the Interim Interpretations, FRA proposed a new interpretation of what constitutes ''during the prior 24 hours'' for the purposes of the prohibition against requiring or permitting a train employee or a signal employee to remain on duty without having had a certain minimum number of consecutive hours off duty during the prior 24 hours. This prohibition is currently found in 49 U.S.C. 21103(a)(3) and 21104(a)(2) (Sec. 21103(a)(3) and 21104(a)(2)).

Under FRA's current ''fresh start'' interpretation of this prohibition, ''the prior 24 hours'' end when an employee reports for a new duty tour. At the instant that the employee reports for duty, FRA looks back at the single 24-hour period before the employee reported for duty to see that the employee had at least 10 consecutive hours off following the prior duty

[2] The language of Sec. 108(b) must be read in conjunction with the language of Sec. 108(g), which provides that Sec. 108(b) becomes effective on July 16, 2009.

assignment. If so, then the employee may be required or permitted to work a maximum of 12 consecutive hours or a total of 12 hours, in broken service, in the next 24 hours, and must get 10 hours off either after working that 12 hours or at the end of the 24-hour period that began when the employee went on duty, whichever occurs first, before the employee is allowed to go on duty again. If an employee had a duty tour involving broken service, including an interim release of at least 4 hours, but less than the 10 hours required for a statutory minimum off-duty period, between two periods of service within the same duty tour, some or all of the employee's eventual statutory minimum off-duty period would come after the 24-hour period that began when the employee reported for duty. The following example illustrates the application of FRA's current, ''fresh start'' interpretation of ''the prior 24 hours'':

• An employee reports for duty at 10 a.m. on a Monday. If the employee had had 10 consecutive hours off duty at any time between 10 a.m. on the preceding day (Sunday) to 10 a.m. on that Monday, FRA would consider the employee as having had the minimum off-duty period during ''prior 24 hours'' because the ''prior 24 hours'' is defined as the 24 hours prior to the employee's act of reporting for duty. The employee would then be permitted to remain on duty for up to 12 hours in the following 24 hours, such that the employee must no longer accrue time on duty after 10 a.m. on Tuesday.

Conversely, under the Proposed Interpretation (which takes the ''continuous lookback'' approach to identifying the statutory minimum off-duty period during ''the prior 24 hours''), the statutory minimum off-duty period would have to be within each of the floating 24-hour periods not only starting when an employee begins a new duty tour, but also during the employee's duty tour, and ending when the employee is relieved from duty, meaning that upon reporting for duty, the employee would have a maximum of 14 hours within which to work a maximum of 12 hours, before the employee would be required to be finally released to have a statutory minimum off-duty period.

The following two examples illustrate the application of the proposed ''continuous lookback'' interpretation.

1. If an employee is off duty from 1 a.m. Monday until 11 a.m. on Monday and then reports for duty at 11 a.m. and works until 11 p.m. on Monday, the 10-hour statutory minimum off-duty period is within the prior 24 hours from any moment while the employee is on duty, up to the time of the employee's final release at 11 p.m. on Monday.

2. However, if the same employee, who was off duty from 1 a.m. Monday until 11 a.m. on Monday and went on duty at 11 a.m. on Monday, then worked for 6 hours and had an interim release from 5 p.m. until 11 p.m. on Monday before returning to duty from 11 p.m. and worked for six more hours until being finally released at 5 a.m. on Tuesday, the employee's time on duty after 1 a.m. on Tuesday would violate the statute because the required full statutory off-duty period would not be within the 24 hours prior to any moment after 1 a.m. on Tuesday). In other words, in this scenario, the employee must no longer accrue time on duty after 1 a.m. on Tuesday.

In discussing the Proposed Interpretation, FRA stated that the ''fresh start'' interpretation of the law (the interpretation issued more than 30 years prior to the enactment of RSIA, at 42 FR 4464, Jan. 25, 1977, which has remained FRA's interpretation since that time) may no longer be consistent with the plain language of the statute. By the terms of the statute as amended by the RSIA, a railroad may not require or allow a train employee to ''remain or go on duty unless that employee has had at least 10 consecutive hours off duty during the prior 24 hours.'' As explained above, under the ''fresh start'' interpretation, a new 24-hour period begins when an employee reports for duty after having had at least the minimum required off-duty period of 10 consecutive hours, and the 24-hour period within which the employee is required to have had the required off-duty period is a single, static prior period, looking only at the 24-hour period prior to when the employee goes on duty for the first time in the new duty tour. Accordingly, when determining if an employee may continue on duty (''remain on duty'') after any point in time later in the duty tour, FRA would not look to find the required 10-hour rest period within the 24 hours prior to that later point in time; instead, FRA would look for the required rest period only during the single 24-hour period immediately prior to the initiation of the duty tour. The RSIA added 49 U.S.C. 21103(e) and 21104(d), which prohibit communication with train employees and signal employees respectively during the 10 hour statutory minimum off-duty period. (FRA's interpretations of these provisions are discussed in Sections IV.C and V.A of this document.) Under the ''fresh start'' approach, since the statutory minimum off-duty period must simply be found in the 24 hours prior to the employee reporting for duty, an employee whose off-duty period was longer than 10 hours could be subject to unlimited communication once the employee had received the required 10 hours uninterrupted, which would reduce or eliminate the benefits of the requirement of an uninterrupted rest period.

By contrast, under the Proposed Interpretation, FRA would instead look for a statutory rest period that is within each 24-hour period prior to any moment during the employee's duty tour. This Proposed Interpretation is referred to as ''continuous lookback'' or the '''continuous lookback' approach.'' This approach would require the uninterrupted 10 hours to be closer to the time that the employee reports for a new duty tour, so that it could still be found within the 24-hour period at any point in the new duty tour.

Reaction to this Proposed Interpretation largely favors rejecting it, with BRS, BLET, UTU, AAR, and APTA lined up on one side opposing the proposal and several individuals and two State boards of rail labor unions on the other side supporting the proposal. Of the commenters that favor the proposed ''continuous lookback approach,'' a substantial number express concern over a railroad practice of repeatedly calling an employee as soon as he or she has met the threshold for minimum hours off duty, even though that employee has a scheduled assignment well afterwards. In so doing, commenters contend the practice prevents an employee from being able to rest immediately prior to his or her assignment and thereby increases that employee's fatigue while performing his or her duties. These commenters uniformly hope that the ''continuous lookback'' approach would increase the train employees' and signal employees' opportunity for rest by giving them at least 10 hours of notice prior to beginning an on-duty period and, therefore, enabling them to schedule their rest accordingly, though FRA believes this is unlikely to be the case for the reasons discussed below.

Comments that oppose the ''continuous lookback'' interpretation are summarized in turn, by commenter. BRS expresses several concerns. First, BRS argues that the ''continuous lookback'' is overly complex, in that a signal employee may no longer simply look for a rest period ending within the 24 hours prior to starting a new duty tour. Second, BRS argues that because the ''continuous lookback'' approach would limit signal employees to working within a period of 14 hours after the completion of their required off-duty period, within which to accumulate up to the maximum of 12

hours on duty, the interpretation would substantially limit the ability of signal employees to work after their scheduled hours, including response to trouble calls or on rest days. Finally, BRS asserts that the interpretation prevents the ''emergency'' provision of the statute (49 U.S.C. 21104(c) (Sec. 21104(c)), i.e., permission to work up to 4 additional hours within the 24-hour period, which was unchanged by the RSIA, from being effective.

Another commenter, AAR, argues that the option of taking the ''continuous lookback'' approach has been foreclosed through Congressional inaction in the face of FRA's longstanding interpretation. Next, AAR echoes the BRS's argument regarding the emergency provision in 49 U.S.C. 21104(c). Further, AAR claims that, because the ''continuous lookback'' approach would limit the number of hours available to an employee in which to accumulate time on duty before the statutory off-duty period is required, the approach would prohibit employees from working as many hours as they are permitted under the current ''fresh start'' interpretation, which would harm both management and employees in a number of ways. For example, AAR expresses concern that call times [3] of greater than 2 hours and less than 10 hours, would prevent an employee from working a full 12 hours, and that increasing call times to 10 hours to avoid this problem would lead to unacceptable train delays. AAR also points out that the decreased period available for employees to accrue time on duty would limit the railroads' ability to make use of periods of interim release within a duty tour, which could mean that employees would more often instead have to spend a statutory off-duty period at an away-from-home terminal. Likewise, if the ''continuous lookback'' interpretation were extended to passenger railroads, AAR noted that the time available to work would be significantly reduced for passenger railroad employees working split-shifts, such that this common scheduling practice would not be possible in many circumstances. Finally, AAR discusses how a ''continuous lookback'' approach would make current practices, such as setting back calls (either through a call-and-release or an early release) or calling a large number of employees to find one willing to take an earlier assignment, such as when an employee marks off sick, infeasible.

BLET and UTU submitted a joint comment arguing that the ''continuous lookback'' approach would negatively affect both safety and the financial well-being of employees. Because the Proposed Interpretation would include call times in the 14-hour period following 10 hours of rest, BLET and UTU argue that railroads would be given an incentive to minimize call times and thereby reduce an employee's ability to schedule his or her rest. Employees would stand to lose substantial earning potential, BLET and UTU assert, because the maximum number of hours the employees may work would be limited to effectively less than the 12 consecutive or aggregate hours authorized by the statute, especially when taking into consideration call times, and the possible use of periods of interim release. The unions also assert that the ''continuous lookback'' approach does not resolve the problem that they see with railroads continually calling employees who have regular times to report for duty. Finally, BLET and UTU echo the concerns expressed by BRS and AAR that the ''continuous lookback'' approach would be too difficult to administer, both in terms of compliance and enforcement.

APTA's comment agrees with the views expressed by BRS, AAR, BLET and UTU discussed above, arguing that the ''fresh start'' interpretation is now the only valid interpretation due to Congressional inaction, and repeating the argument that Sec. 21104(c), which deals with emergencies, would be voided by the ''continuous lookback'' approach.

Commenters in favor of the ''continuous lookback'' approach note that an employee can be more rested if that individual has the information to know when he or she will next be expected to report for duty. The hope of these commenters is that the ''continuous lookback'' approach would induce railroad carriers to provide employees with a 10-hour call time and therefore allow those employees to appropriately plan their rest so that they are rested immediately prior to the coming on-duty period. However, in light of the comments received from AAR, APTA, BLET, and UTU, FRA is deeply concerned that railroads would instead shorten call times as much as practicable in order to maintain flexibility in scheduling crews in spite of the ''continuous lookback.'' Shortened call times would leave employees in the same informational deficit as presently exists, but with even less of an opportunity to engage in strategic napping to mitigate fatigue. This outcome would result in more fatigue for railroad workers, and is therefore inconsistent with Congress's clear goal of improving railroad safety by reducing fatigue among railroad employees.

Several commenters in favor of the ''continuous lookback'' further suggest that FRA act to prohibit railroad carriers from making optional duty calls to employees who do not wish to accept an assignment other than their regularly-scheduled assignment. That idea would require FRA to promulgate a new regulation, and is therefore outside the scope of FRA's present effort to interpret the text of the statute as most recently amended by the RSIA.

As was discussed above, commenters also highlighted a number of implementation issues in the potential use of the ''continuous lookback'' interpretation. While these difficulties are not insurmountable, they are nonetheless important to consider. FRA has an interest in keeping the burden of complying with the hours of service laws as low as possible while achieving the safety goals mandated by Congress. Given the uncertain effect of the ''continuous lookback'' on railroad safety, FRA believes it is not currently reasonable to impose such a significant burden on the regulated community.

In addition, minor changes to the statute over time also demonstrate Congress's acceptance of FRA's ''fresh start'' interpretation. In the 1978 amendments to the Hours of Service Act, Congress added a definition of the ''24 hour period'' within which a signal employee may work. The statute explicitly defined the period as beginning ''when an individual reports for duty immediately after he has had at least eight consecutive hours off duty.'' Federal Railroad Safety Authorization Act of 1978, Public Law 95–578, 92 Stat. 2459 (Nov. 2, 1978). The amendment adding the language was referred to in the relevant committee report as ''principally * * * technical amendments which would have the effect of making the statute more certain of application.'' H.R. Rep. No. 95–1176, at 8 (1978), reprinted in 1978 U.S.C.C.A.N. 5499, 5505. This addition reflects Congressional approval of FRA's pre-existing interpretation of a parallel provision in the section applicable to train employees, then codified at 45 U.S.C. 62, to apply in a similar manner. This language was stripped from the statute in the RSIA. This change is best understood as a reflection of Congress's judgment that the paragraph was redundant given the 1994

[3] ''Call time'' is the amount of prior notice that an employee receives from the railroad concerning when he or she must next report to duty. The minimum necessary call time is usually the subject of collective bargaining.

recodification's increased symmetry between the ''train employee'' section, now codified at 49 U.S.C. 21103, and the ''signal employee'' section, now codified at 49 U.S.C. 21104. The plain language continues to be ambiguous on the question of within which period the required rest time may be found. In light of FRA's longstanding and consistent construction of the hours of service laws as requiring rest at some point in the 24 hours prior to initiating an on-duty period, leaving that ambiguity intact signals Congressional approval for FRA's interpretation. Additionally, nothing in the legislative history of the RSIA reflects an intent to upset the existing interpretation, and the ''fresh start'' interpretation remains a reasonable reading of the plain language of the statute.

FRA has decided that these arguments against the ''continuous lookback'' approach discussed above merit remaining with the current ''fresh start'' interpretation. At this time, it appears from the comments that the effect of a ''continuous lookback'' on safety may well be to increase fatigue. The proposed interpretation is therefore less consistent with the goals of Congress in enacting the original Hours of Service Act, subsequent amendments, recodification, and the RSIA amendments to increase railroad safety by reducing fatigue. Additionally, small changes to the statute support the position that Congress has given its imprimatur to FRA's existing ''fresh start'' interpretation. Finally, implementation of the ''continuous lookback'' at this time would be so difficult as to make the interpretation unjustified in light of its speculative safety benefits. For all of these reasons, FRA concludes that under the current circumstances, its longstanding interpretation of ''the prior 24 hours'' as a reference to a 24-hour period prior to reporting for duty, the ''fresh start'' interpretation, remains the most reasonable reading of the statute, and thus FRA will keep that interpretation in place.

B. Questions Regarding the ''Consecutive-Days'' Limitations for Train Employees and Requirement of 48 or 72 Hours Off Duty at the Home Terminal

1. What constitutes a ''Day'' for the purpose of sec. 21103(a)(4)?

In general, Sec. 21103(a)(4) prohibits a railroad from requiring or allowing a train employee to go on duty or remain on duty after an employee has ''initiated an on-duty period each day for * * * six consecutive days'' until the employee has had 48 hours at his or her home terminal unavailable for any service for any railroad carrier. In limited circumstances, the employee is instead allowed to work seven consecutive days, but must then have 72 hours at the employee's home terminal unavailable for any service for any railroad carrier before going on duty as a train employee. *Id.* As presented, the word ''day'' is sufficiently ambiguous that the statute is unclear as to whether this requirement for extended rest (48 consecutive hours) is triggered by initiating an on-duty period on six consecutive calendar days or six consecutive 24-hour periods. In the Interim Interpretation IV.B.1,[4] FRA stated that ''[a]lthough arguments could be made for either interpretation of this language, FRA interprets this provision as related to initiating an on-duty period on 6 or 7 consecutive calendar days.''

In consideration of the comments received on this Interim Interpretation, the nature of the railroad industry, and additional fatigue considerations that have become more apparent with the implementation of this Interim Interpretation, FRA has determined that the negative consequences flowing from defining ''day'' as a calendar day for the purpose of Sec. 21103(a)(4) overcome the minor administrative benefits noted by FRA in the Interim Interpretation. Accordingly, for the reasons described below, effective May 29, 2012, FRA will construe ''day'' in this section to refer to a 24-hour period. Specifically, FRA will view the statutory ''day'' to be the 24-hour period that ends when the employee is finally released from duty and begins his or her statutory minimum off-duty period; any new initiation of an on-duty period at any point during the 24-hour period following the employee's prior final release will have been initiated on a day consecutive to the prior duty tour, which will continue the series of consecutive days. On the other hand, if the employee does not initiate an on-duty period during the 24-hour period following the employee's prior release, then that 24-hour period breaks the consecutiveness of the days in the series.

As described above, the statutory provision requires that, when an employee ''has initiated an on-duty period each day for * * * 6 consecutive days,'' that employee must have 48 hours of time off duty, with some exceptions allowing for a seventh consecutive day. FRA's Interim Interpretation of the provision established the period that would constitute a day for purposes of determining whether an on-duty period had been initiated on consecutive days as synchronized with the calendar day, such that each statutory day would begin and end at midnight. Having eliminated this reference point, FRA considered two options for reference points for the beginning and ending of a 24-hour day as related to an employee's duty tour and statutory minimum off-duty period: Either (1) having the day begin at the initiation of the employee's duty tour or (2) having the day end at the conclusion of the employee's duty tour.

The implication of the choice lies in what it means for initiations of on-duty periods to be ''consecutive'' with one another. In the former possible definition (where the day begins with the initiation of an on-duty period), the next consecutive day would begin 24 hours after the employee's initiation, and continue for another 24 hours, such that an employee's duty tours would be deemed ''consecutive'' whenever the initiations of the respective on-duty tours were separated by less than 48 hours (regardless of how much of the period was time on duty, time off duty, or time that is neither on duty nor off duty (i.e., limbo time)). By contrast, in the latter possible definition (where the day ends with the employee's final release and the conclusion of the duty tour), the next consecutive day would begin at the employee's final release and continue for another 24 hours, such that an employee's duty tours would have been initiated on consecutive days when the initiation of an on-duty period is less than 24 hours from the employee's prior final release from duty.

FRA believes both of these understandings of a 24-hour day to be reasonable understandings of what ''day'' means in this context. In choosing between the two definitions, FRA noted that the amount of time necessary to end a series of consecutive days if the day began with the initiation of an on-duty period would be highly variable. In particular, the length of time not on duty that would be required to break a series of consecutive days would range from 47 hours and 59 minutes to 24 hours (depending on the length of the prior duty tour), with the peculiar result that the amount of off-duty time necessary to end the series would decrease as the prior duty tour length increased. Although the end of the consecutive day would be fixed as soon as an employee returned to work as 48 hours later, the variable length of time not initiating an on-duty period that would be required to avoid continuing the series of consecutive days, which

[4] 74 FR 30665, 30673 (June 26, 2009).

would not be known until the duty tour ended, would likely lead to employee confusion as to the application of the laws. If the day instead ends with the employee's final release, a period of 24 hours not on duty is always both necessary and sufficient to end the series of consecutive days, providing some level of administrative efficiency while avoiding the negative consequences that result from the use of a calendar day, that were discussed in comments on the interim definition of ''day'' as a calendar day.

The vast majority of commenters, including the BLET and UTU in their joint comment, argue against the ''calendar day'' interpretation as inconsistent with existing railroad practice and harmful to railroad workers who will be unable to work previously acceptable schedules, and, as a result, they will earn less money.[5] BLET and UTU argue that a 24-hour period of time off duty should be considered a break in the count of consecutive days, due to ''the severe effects that will flow from the current interim interpretation.''

The economic effects of the Interim Interpretation are discussed in detail in a comment submitted by an individual, which includes a schedule of trains for one crew in Needles, CA. The schedule appears to demonstrate that an individual working on a regular pool job may lose as much as $1,140 in an average month by operation of the ''calendar day'' interpretation, though this chart does not take into account the new requirement of having 10 hours of uninterrupted rest, rather than 8 hours of rest, as was the requirement prior to the RSIA. In addition, many individual commenters note that railroads grant personal leave ''days'' as a 24-hour block of time, rather than a calendar day. Other commenters note that a ''day'' can refer to any continuous 24-hour period. Another commenter describes how railroad carriers can adjust call times slightly so that an on-duty period is not initiated until the next calendar day, thus breaking the string of consecutive days, in order to prevent employees from being required to have the mandatory rest. Commenters also express concern about how the ''calendar day'' interpretation impacts employees whose service falls on two calendar days, such that they have initiated an on-duty period on one calendar day, while performing substantial service on the next calendar day, in which they may not initiate an on-duty period, which would end the string of consecutive days.

The comments, as well as FRA's oversight of compliance with the hours of service laws since the RSIA's effective date, also raise fatigue concerns with the ''calendar day'' interpretation. Railroads, as well as some train employees, may seek to maximize employees' availability to perform service by scheduling such that the employee never reaches the point of having initiated an on-duty period on six consecutive days, and, therefore, 48 hours of time off duty is never required. In some cases, such practices can limit cumulative fatigue by allowing employees to have significant amounts of time off prior to reaching six consecutive days initiating an on-duty period. In some cases, however, the calendar day interpretation allows for a break in the series of consecutive days by shifting an employee's initiation of an on-duty period relatively slightly. For example, if an employee would normally be available for service at 11 p.m., and had not previously initiated an on-duty period on that calendar day, a railroad may rationally decide that it is in its interest to delay calling that employee to report for duty, allowing that employee to report for duty at least an hour later, so that the employee does not initiate an on-duty period on that calendar day, thereby restarting the count of consecutive days before that employee is required to have 48 hours of time off duty.

Because the statutory text clearly refers to the ''initiation'' of an on-duty period rather than the breadth of an on-duty period, it is possible for an employee to be within a duty tour for the majority of a calendar day and yet not have initiated an on-duty period on that calendar day. For instance, an employee who initiates an on-duty period on Monday evening at 11:15 p.m., is on duty for 12 hours, and then has a 2-hour deadhead to final release would be finally released at 1:15 p.m. on Tuesday afternoon. With a statutory minimum off-duty period of 12 hours (as a result of the additional rest required by Sec. 21103(c)(4)), such an employee could lawfully next initiate an on-duty period no earlier than 1:15 a.m. on Wednesday. Despite spending the majority of Tuesday in a duty tour for the railroad, this employee would be deemed to have broken his or her series of consecutive days, and could lawfully initiate a duty tour on at least another six consecutive days before being provided with the required 48 hours of time off duty. This consequence is all the more pernicious when considering that the transition from one calendar day to the next occurs overnight, when individuals are generally at the greatest risk for fatigue. The result is that the ''calendar day'' interpretation of Sec. 21103(a)(4) as presently written would provide the greatest latitude for minor changes in an employee's report for duty time to dramatically reduce the required rest for precisely those employees who are at the greatest risk for fatigue. While FRA continues to believe that defining ''day'' as ''calendar day'' remains reasonable in the abstract, these fatigue concerns, in addition to the issues described above, lead FRA to conclude that defining ''day'' as the 24-hour period measured from the time of the employee's prior final release is not only reasonable but preferable.

Finally, FRA notes that the ''24-hour day'' interpretation of Sec. 21103(a)(4) described above is distinct from the recently issued final rule governing the hours of service for train employees providing intercity and commuter passenger rail transportation (passenger train employees). 76 FR 50360 (August 12, 2011). The cumulative fatigue limitations for passenger train employees are explicitly defined such that the relevant series of days are ''consecutive calendar days.'' 49 CFR 228.405(a)(3). This distinction is appropriate given the different structure of passenger and freight rail transportation as well as the specific characteristics of the passenger train employees' hours of service regulation. Passenger rail transportation tends to have more regular schedules than freight rail transportation, with many passenger train employees working during the day for five to six days a week. FRA would also expect that passenger trains would be less susceptible to having their schedules adjusted on an ad-hoc basis in a way that would affect the application of the regulation to a specific employee with respect to a consecutive-day limitation. Additionally, the structure of the passenger train employees' hours of service regulation provides additional rest requirements for employees working in the transition from one calendar day to the next. Any duty tour including time on duty between 8 p.m. and 4 a.m. is considered a Type 2 assignment, which requires a more stringent limitation on the number of days within a series on which an on-duty period may be initiated, unless the schedule is analyzed using a biomathematical model of performance and fatigue and is thereby shown not to present an unacceptable level of risk for fatigue, and the schedule otherwise meets the criteria to be a Type 1

[5] In contrast, in a separate comment, the Georgia State Legislative Board of BLET favored the ''calendar day'' interpretation, though its comment does not provide any additional detail beyond its statement of support.

assignment. In addition, any duty tour including time on duty between midnight and 4 a.m. is categorically a Type 2 assignment. Therefore, assignments that cover a period of time spanning two calendar days will be subject to the additional limitations of Type 2 assignments. These factors made the use of calendar days appropriate in the overall regulatory scheme for passenger train employees' hours of service, but do not favor the reading of ''day'' to mean calendar day in the statutory provision applicable to freight rail transportation.

2. What ''Work'' may an employee do on a seventh consecutive day under sec. 21103(a)(4)(A)?

The statute provides that a train employee may ''work a seventh consecutive day'' under certain limited circumstances, and requires that employee to have 72 hours off duty at the employee's home terminal before returning to duty after ''working'' the seventh day. In Interim Interpretation IV.B.3,[6] FRA asserted that Congress's choice of a different word (''work''), rather than continuing to use the ''initiate an on-duty period'' construction, implied a different meaning for that word, so that if an employee did not initiate an on-duty period, but performed other service for the carrier on the seventh consecutive day, after six consecutive days of initiating an on-duty period, the string of consecutive days would not have been broken, and the employee would be required to have the 72 hours off duty that would be required after seven consecutive days. In response to comments received on this Interim Interpretation, and in consideration of the confusion caused by this interpretation, FRA now interprets ''works'' in Sec. 21103(a)(4)(A)(ii) to be synonymous with ''initiates an on-duty period.''

The BLET and UTU joint comment argues against the Interim Interpretation that considered ''work'' as a different word with a different meaning. The unions assert that, because time spent deadheading from a duty assignment to the point of final release is neither time on duty nor time off duty, FRA's including such deadheading in the definition of ''work'' is inconsistent with the clear statutory provision, at 49 U.S.C. 21103(b)(4) (unchanged by the RSIA) defining ''time spent in deadhead transportation from a duty assignment to the place of final release'' as ''neither time on duty nor time off duty.'' Thus, BLET and UTU contend that if the only service an employee performs on the seventh consecutive day is deadheading, separate from any covered service, the string of consecutive days should be broken, just as it would if the deadhead transportation had occurred on the sixth consecutive day[7] or any other day in the sequence of consecutive days. The comment also notes FRA's admission of construction problems in other portions of the statute.[8] Finally, the comment claims that this interpretation leads to absurd results when combined with Interim Interpretation IV.B.6,[9] which allows rest at an away-from-home terminal to break consecutiveness and thereby require only 48 hours of rest after a deadhead home. The Georgia Legislative Board of the BLET concurs, arguing that such deadheading should categorically not be counted as a ''day'' for the purpose of this section.

Despite the interpretive canon that statutes should be construed with attention to Congress's choice to use different words in the same statute, FRA concludes, for the reasons described in this section, that to ''work'' and to ''be on duty'' are sufficiently related concepts to infer that Congress chose the former over the latter out of stylistic preference (to avoid repetitive language) and not to adjust the substantive scope of the provision. This reading of the text preserves the parallelism between Sec. 21103(a)(4)(A)(i) and subsection (a)(4) generally, in that subsection (a)(4)(A)(i) allows an employee to ''work'' a seventh consecutive day notwithstanding subsection (a)(4)(A)'s rest requirement after initiating an ''on duty period'' for the prior six consecutive days. This interpretation of the text is also supported by FRA's interest in avoiding a needlessly complex reading of the statute. FRA notes that there has been confusion among railroads and employees, about the fact that under the Interim Interpretation, deadheads were treated differently on different days.

3. Does a day spent deadheading, with no other covered service performed on that day, constitute an ''Initiation of an On-Duty Period'' for the purposes of sec. 21103(a)(4)?

In order for an employee to be required to have 48 consecutive hours off duty at the employee's home terminal, that employee must first have initiated an on-duty period each day for six consecutive days. Several commenters express concerns over how this language will be interpreted with regard to days on which the only service performed for the carrier is deadhead transportation. Because such time is not time on duty, it cannot be considered the ''initiation of an on-duty period'' and therefore does not independently count toward the continuation of a series of consecutive days.

The statute defines two types of deadheading relating to time on duty as a train employee. In Sec. 21103(b)(4), the hours of service laws establish that time spent in deadhead transportation to a duty assignment, i.e. a ''deadhead to duty,'' is time on duty, but that deadhead transportation from a duty assignment to the place of final release, i.e., ''deadhead from duty,'' is neither time on duty nor time off duty. However, because these definitions are only in reference to determining time on duty, the statute is silent about a third type of deadheading, where the deadhead transportation is separated from any covered service by at least a statutory minimum off-duty period both prior to and following the deadhead transportation. Such ''stand-alone deadheads'' are not time on duty as an employee in such a deadhead is not engaged in or connected with the movement of a train, nor is the time spent in such deadhead transportation within the same 24-hour period as other covered service with which it could commingle.

The Nebraska State Legislative Board of the UTU argues that FRA's understanding of deadheading as not ''initiating an on-duty period'' for the purpose of Sec. 21103(a)(4) is inconsistent with the intent of the RSIA, and therefore should be replaced by a regulation that classifies all deadheading as time on duty and therefore prevents a railroad from deadheading an employee to break the contiguousness of workdays. Individuals commenting on the matter agree, arguing that permitting deadheading to interrupt the counting of consecutive days will allow railroads to strategically use deadheading to prevent train employees from having a day off; however, the promulgation of new

[6] 74 FR 30665, 30673–74 (June 26, 2009).

[7] BLET and UTU point out that FRA acknowledged this outcome on the sixth consecutive day in the interim interpretations. 74 FR 30665, 30673 (June 26, 2009).

[8] Specifically, the comment refers to the fact that the language of the statute would not allow an employee to be deadheaded back to his or her home terminal, if that employee had exceeded the 276-hour monthly cap in 49 U.S.C. 21103(a)(1), which includes time spent awaiting and in deadhead transportation from a duty assignment to the place of final release.

[9] 74 FR 30665, 30674 (June 26, 2009).

regulations is outside the scope of this interpretation.

The lone commenter speaking to the issue and arguing against considering deadheading to count as initiating an on-duty period, the Georgia State Legislative Board of the BLET notes that the definition of ''time on duty'' in the statute categorically excludes deadheading to a place of final release, and therefore would preclude FRA from considering deadheading that is the only service performed on a given day to count as initiating an ''on-duty period.''

FRA will continue to apply its longstanding interpretation of deadheading that commingles with a period of covered service, which is consistent with the language of the statute at 49 U.S.C. 21103(b)(4). If an employee deadheads to duty at the beginning of a duty tour, time spent in the deadhead is time on duty, and therefore the beginning time of the deadhead to duty constitutes the initiation of an on-duty period for the purposes of Sec. 21103(a)(4). In contrast, where an employee deadheads to a point of final release as the last activity in a duty tour, the deadhead remains neither time on duty nor time off duty. However, because the deadhead follows other service within the duty tour, the employee would necessarily have initiated an on-duty period earlier that day when beginning to perform covered service or commingled service.

In circumstances where an employee has a stand-alone deadhead, there must necessarily be no time on duty associated with the deadhead transportation; if there were time on duty not separated from the deadhead by at least a statutory minimum off-duty period, the deadhead would therefore have to be either a deadhead to duty or a deadhead from duty. Because stand-alone deadhead transportation is most comparable to other service outside the definition of covered service, the time spent in stand-alone deadhead transportation will be treated as any other non-covered service for the carrier, and therefore will not constitute the initiation of an on-duty period under Sec. 21103(a)(4) when not commingled with covered service. In light of FRA's interpretation in section IV.B.2, above, such stand-alone deadheads will be treated consistently, as breaking the continuity of the consecutive days, regardless of the day in the string of consecutive days on which the deadhead occurs.

4. Does the initiation of an on-duty period incident to an early release qualify as an initiation for the purposes of sec. 21103(a)(4)?

Yes. The statute provides (unchanged by the RSIA) that ''[t]ime on duty begins when the employee reports for duty, and ends when the employee is finally released from duty.'' 49 U.S.C. 21103(b)(1). Consistent with this language, longstanding FRA interpretations provide that, if a railroad calls an employee to report to perform covered service and the employee reports for that covered service assignment, the act of reporting is itself time on duty. Federal Railroad Administration, Hours of Service Interpretations, Operating Practices Technical Bulletin OP–04–29 (Feb. 3, 2004). It follows that a train employee who reports for duty but is then released before performing any substantial duties is still considered to have accrued time on duty. Accordingly, as FRA stated in the Interim Interpretation, such an employee has ''initiated an on-duty period'' under Sec. 21103(a)(4). In the case where an employee is released from the call to perform duty (that is, the employee is no longer expected to report for duty at the previously established report time) prior to the time that the employee is scheduled to report, then the employee has not reported, regardless of whether the employee is at the location to which he or she was called to report, and, if the employee has not performed any covered service, the employee will not have accrued any time on duty or initiated an on-duty period.[10] FRA sees nothing in the statute that would support a change in this interpretation. As a result, an employee who reports for duty and is immediately released has initiated an on-duty period, and that duty tour will not end until the employee is finally released to a statutory minimum off-duty period.

The BLET and UTU joint comment notes a supposed consequence of FRA's longstanding interpretation of the statute. On days one through five, an employee would be considered to have initiated an on-duty period for that day, regardless of whether the employee actually performed covered service. On day six or seven, the comment argues, a train employee who reports for duty to perform covered service and is released from duty shortly thereafter would not have the opportunity to be called to perform additional service within that 24-hour period, because of the requirement for 48 or 72 hours of rest. The comment implicitly raises the issue of when the 48 or 72 hours of rest would begin for employees who have an early release after initiating an on-duty period on their sixth or seventh consecutive day.

The unions seek an interpretive rule that would not further limit a train employee's availability under the law to work, on the grounds that such extended rest is not warranted due to the minimal amount of time spent on duty on the sixth consecutive day. The unions argue, as does the Georgia State Legislative Board of BLET, that it is ''manifestly unjust'' for a train employee to be forced into the 48 or 72 hours of mandatory rest after an on-duty period lasting only minutes. Instead, they hope for FRA to interpret ''initiate an on-duty period'' not to include a small period of duty time. The joint BLET/UTU comment notes that in these situations, ''little if any covered service is actually performed, except, perhaps, for a limited amount of administrative duties.''

The unions are correct that the language of Sec. 21103(a)(4) could be read to prohibit a railroad from requiring or allowing an employee to return to work after an early release on his or her sixth consecutive day of initiating an on-duty period, unless the employee has had 48 consecutive hours off duty unavailable for any service for any railroad carrier. If FRA were to take a very literal reading of Sec. 21103(a)(4), then if a train employee is immediately released after initiating an on-duty period for a sixth consecutive day, the train employee would not be allowed to return to duty until the 48-hour rest requirement had been fulfilled. FRA believes that this is obviously not the proper reading of the statute.

As was noted above, Sec. 21103(b)(1), which defines time on duty generally, provides that ''[*t*]*ime on duty* * * * ends when the employee is finally released from duty.'' (Emphasis added.) In addition, Sec. 21103(a)(4)(A)(i) allows an employee to ''work a seventh consecutive day if that employee completed his or her final period of on-duty time on his or her sixth consecutive day at a terminal other than his or her home terminal.'' This would not be possible if the 48 hours off duty were required immediately after the initiation of an on-duty period on the sixth consecutive day. The plain language of the statute clearly permits an employee to perform service on his or her sixth consecutive day, demonstrating that the very literal interpretation is flawed. As demonstrated by Congress's treatment of the provision, the other statutory

[10] 74 FR 30665, 30673 (June 26, 2009).

language, and the interpretation of all commenters, the restriction of Sec. 21103(a)(4) does not apply until the employee is finally released from duty; that is, an employee may continue to perform covered service until the end of the relevant duty tour, including any periods of interim release (because, during an interim release, the employee is not ''finally'' released from duty). Having established when the extended-rest requirement is activated, an employee subject to an early release may return to work without violating Sec. 21103(a)(4) so long as he or she has not ''finally'' been released from duty. If the employee returns to work, whether in a single period of time on duty or after an interim release period, that employee has not been ''finally'' released from duty and, therefore, is not yet subject to the extended-rest requirement. When the employee is finally released from duty, the employee must be given the statutory minimum off-duty period (normally, 10 consecutive hours) as well as the extended-rest period, both of which will begin to run concurrently.[11]

With respect to the request for an exception for employees who perform little covered service after reporting for duty, these employees will continue to be considered to have initiated an on-duty period, even if they did not perform any substantial amount of covered service within that period. Time on duty begins when an employee reports for duty; therefore, when an employee reports for a covered service assignment as a train employee, he or she has reported for duty, thus initiating an on-duty period, even if he or she does not perform any additional covered service in that on-duty period. Accordingly, the amount of covered service performed within the period is irrelevant for determining whether the employee initiated an on-duty period.

5. If an employee is called for duty but does not work, has the employee initiated an on-duty period? If there is a call and release? What if the employee has reported?

As discussed above, an employee only initiates an on-duty period if the employee accrues time on duty. As such, if the employee is called for duty but does not report, such as if the employee is released prior to the report time in a call and release, the employee has not initiated an on-duty period. However, if the employee has reported for duty, the employee has accrued time on duty and therefore has initiated an on-duty period.

6. Does an employee's performance of ''Other Mandatory Activity for the Carrier'' that is not covered service ever count as the initiation of an on-duty period under sec. 21103(a)(4)?

Yes, but only if the non-covered service commingles with covered service. In Interim Interpretation IV.B.4, FRA asked the question, ''Does Attendance at a Mandatory Rules Class or Other Mandatory Activity That Is Not Covered Service But Is Non-Covered Service, Count as Initiating an On-Duty Period on a Day?'' FRA answered that question in the negative, but did note if this non-covered service were to commingle with covered service (meaning it was not separated from covered service by a statutory minimum off-duty period) then initiation of the non-covered service activity would qualify as initiation of an on-duty period, because the commingled service, in this case, becomes time on duty.[12]

The Nebraska State Legislative Board of the UTU expresses concern that, by not counting as a ''day'' attendance at mandatory rules classes or other similar mandatory activity that is non-covered service for the purposes of determining whether a train employee initiated an on-duty period, train employees may be required to participate in a rules class for several hours and then immediately be pressed into 12 hours of covered service.

The above-described scenario is not an implication of not counting ''other mandatory activity'' as ''initiating an on-duty period'' under Sec. 21103(a)(4), and is not permissible under the hours of service laws, neither as they existed before the RSIA, nor as amended by the RSIA. The commenter appears to be under the impression that, by not treating non-covered service as an ''initiation'' for the purposes of Sec. 21103(a)(4), that implies that time spent in non-covered service does not commingle with covered service if not separated from it by at least a statutory minimum off-duty period; however, this is not the case. As stated in the Interim Interpretations, the commingling of covered and non-covered service continues to function as it did prior to the RSIA. This interpretation, that attendance at a rules class, or other non-covered service may break a string of consecutive days, will only apply if an employee has a statutory minimum off-duty period between the non-covered service and the covered service both preceding and following it, meaning that there is no covered service to commingle with the non-covered service; in such a situation, the non-covered service would not constitute the initiation of an on-duty period because no ''time on duty,'' as defined in Sec. 21103(b), was incurred. However, when there is not a statutory minimum off-duty period between non-covered service and covered service, the non-covered service commingles and is time on duty that can be considered as an initiation of an on-duty period.

7. How much rest must an employee have after initiating an on-duty period for six consecutive days, if permitted to do so for seven consecutive days by sec. 21103(a)(4)(B)?

As a general rule, Sec. 21103(a)(4) allows a train employee to initiate an on-duty period on only six consecutive days. However, Sec. 21103(a)(4)(B) (Subparagraph (B)) allows an employee to initiate an on-duty period on a seventh consecutive day under limited circumstances as provided in clauses (i) through (iii) of Subparagraph (B). The structure of the statute does not make it readily apparent to some readers how Subparagraph (B) interacts with Sec. 21103(a)(4)(A) (Subparagraph (A)). FRA reads these subparagraphs to apply jointly, so that a train employee who is permitted to initiate on-duty periods on 7 consecutive days must have 48 hours of time unavailable for any service for any railroad carrier if that employee instead initiates on-duty periods on only 6 consecutive days.

One commenter expresses concern over the interaction between Subparagraphs (A) and (B). He argues that employees who meet one of the conditions in Subparagraph (B)(i)–(iii) are exempt from Subparagraph (A) and, therefore, may work six consecutive days without being required to receive 48 hours off.

Congress did not specifically indicate whether Subparagraph (B) is intended to be an additional rule alongside Subparagraph (A), or instead is a replacement for Subparagraph (A) when Subparagraph (B) is applicable. The comment asserts that, because Subparagraph (B) does not specifically apply Subparagraph (A) to those employees who are permitted to initiate an on-duty period on a seventh consecutive day, the two were intended to be construed as distinct alternative regimes. The statute does, however, contain some language suggesting both provisions should apply in parallel. In addition, nothing in the legislative

[11] In a separate future publication in which FRA adopts several new interim interpretations and requests comment on the new interim interpretations, FRA plans to include a more detailed discussion of the idea of that multiple required off-duty periods run concurrently as opposed to consecutively.

[12] 74 FR 30665, 30674 (June 26, 2009).

history demonstrates an intention for Subparagraph (B) to trump Subparagraph (A), and policy considerations support the application of both subparagraphs to individuals.

Had Congress intended for Subparagraph (B) to be an exception from Subparagraph (A), the effect of Subparagraph (B) could be to allow employees to initiate six consecutive on-duty periods without requiring a 48-hour mandatory rest period (sometimes referred to as a ''6/1 schedule''), as well as allowing those employees to work a seventh consecutive day with a longer mandatory rest period to follow before returning to train service as provided by the statute. Congress specifically included a separate waiver process in Sec. 21103(a)(4), suggesting that Subparagraph (B) should be read as something other than an exemption from the general rule of Subparagraph (A), and in some instances FRA has used this waiver authority to allow employees to initiate an on-duty period on six consecutive days followed by one day free of initiation of an on-duty period. In addition, the introductory clause of Subparagraph (B) (''except as provided in subparagraph (A)'') contemplates both paragraphs applying to individual employees, by allowing some individuals to initiate a seventh consecutive day despite not meeting the requirements of Subparagraph (B). The clause would not be necessary if the statute were structured with Subparagraphs (A) and (B) as mutually exclusive.

The paragraph structure of the statute could instead be viewed as a basis for reading their ''or'' disjunction as exclusive, meaning that only one subparagraph or the other could apply to a single employee, but not both, but this argument is unpersuasive. While there may have been more straightforward ways of structuring the requirements of Subsection (a)(4), the structure is consistent with the style of Subsection (a) of Sec. 21103 as a whole. While Subparagraphs (A) and (B) (in Section 21103(a)(4)) are certainly more complicated than Subsection (a)(1)(A) through (C), the logical arrangement of the disjunction is the same. In both, related statements are split into multiple subparagraphs, joined by the word ''or.'' It is readily apparent that the types of service listed in Subsection (a)(1)(A) through (C) are not mutually exclusive; for instance, counting time on duty as part of the 276-hour limit does not prevent also counting time waiting for deadhead transportation as part of that limit. Subparagraphs (A) and (B), despite their additional complexity, should be read similarly. This understanding is furthered by stripping the separate paragraphs of their designations and then combining their text into the one extremely long sentence that they comprise. That sentence reads, in relevant part, ''a railroad carrier * * * may not require or allow a train employee to * * * remain or go on duty after that employee has initiated an on-duty period each day for 6 consecutive days, unless that employee has had at least 48 consecutive hours off duty * * * or, except as provided in subparagraph (A), 7 consecutive days, unless that employee has had at least 72 consecutive hours off duty * * *.'' When read in context, the clauses lend themselves to an inclusive disjunction (including one of the subparagraphs, the other, or both) rather than exclusive disjunction (either one of the subparagraphs or the other, but not both), indicating that both clauses may apply to a single individual.

Considering all of these factors, the most reasonable reading of the statute is that Sec. 21103(a)(4)(A) continues to apply to a train employee who is permitted to initiate seven consecutive on-duty periods by Sec. 21103(a)(4)(B). Therefore, any train employee who initiates six consecutive on-duty periods will be required to have had at least 48 hours unavailable for any service for any railroad carrier at the employee's home terminal before being allowed to go on duty again as a train employee, though a train employee in certain circumstances is permitted to initiate a seventh consecutive on-duty period and afterwards must have 72 hours unavailable for any service for any railroad carrier at the employee's home terminal before returning to duty as a train employee.

8. How are initiations of on-duty periods for multiple railroad carriers treated under sec. 21103(a)(4)?

Prior to the RSIA, the hours of service laws did not restrict, in any way, an employee's activities during periods of off-duty time. Thus, FRA did not have the statutory authority to penalize either a railroad, or an employee, if an employee worked at a second job during his or her statutory off-duty period. The employee was not required under the hours of service laws to report time spent in the second job to the railroad, regardless of whether the second job was for another railroad, or outside the railroad industry, and the railroad was only responsible for ensuring that the employee did not perform service for the railroad during the required statutory off-duty period. FRA recommended legislative amendments to address situations of dual employment, but they were not adopted.[13]

The RSIA did not change the application of the hours of service laws to employees working for multiple railroads, except as to the provision that it added to the statute requiring an extended off-duty period of 48 hours after an employee has initiated an on-duty period for six consecutive days. Section 21103(a)(4) specifies that during the 48- or 72-hour off-duty period at the employee's home terminal, ''the employee is unavailable for any service for any railroad carrier.'' The language indicating that the employee must be unavailable for any service for any railroad carrier was not added to any of the other periods of off-duty time provided for in the statute.

AAR, in its comment, requests that FRA clarify the hours of service reporting and recordkeeping obligations as to service performed for other railroads, arguing that only service performed for other railroads during the extended rest period required by Sec. 21103(a)(4) needs to be reported. In addition, one individual commenter asks whether an employee will be required to provide information to each railroad for which he or she performs service, regarding consecutive days of covered service or service towards the 276-hour monthly limitation. Another individual commenter asks if a train employee may indefinitely work a schedule of five days for one railroad carrier and two days for a different railroad carrier.

With respect to the reporting and recordkeeping requirements for service for other railroads, FRA disagrees with AAR's statement that information on service for other railroads is ''irrelevant from the perspective of railroad compliance with the hours-of-service requirements.'' The hours of service laws impose duties directly on railroad carriers and their officers and agents; ''a railroad carrier and its officers and agents may not require or allow a train employee'' to go or remain on duty in the circumstances stated in the statute

[13] On April 1, 1998, the Secretary submitted to the 105th Congress proposed legislation entitled the Federal Railroad Safety Authorization Act of 1998, which included provisions that would amend the hours of service laws to address train, signal, and dispatching service employees employed by more than one railroad. The legislation was introduced by request in the House of Representatives on May 7, 1998 as H.R. 3805 and in the Senate as S. 2063 on May 12, 1998, and was not adopted. On July 26, 1999, the Secretary submitted to the 106th Congress proposed legislation entitled the Federal Railroad Safety Authorization Act of 1999, which also included provisions on such dual employment. This legislation was never introduced and lapsed at the end of that Congress.

and unless the stated conditions are met. Sec. 21103(a). In order to comply with the hours of service laws, a railroad must inquire of each of its train employees as whether he or she has performed any service for any other railroad, during any 48 or 72 hours between the employee's final release from the duty tour triggering the rest requirement and the next time the employee reports for duty as a train employee.

If a railroad does not seek to collect information from its employees indicating when they perform service for other railroad carriers, that railroad will be unable to fulfill its obligation not to require or allow an employee who has initiated on-duty periods on six or seven consecutive days to remain or go on duty without the 48 or 72 hours free of any service for any railroad. Therefore, as indicated in the Interim Interpretations, ''[i]t will be the responsibility of the railroad to require employees to report any service for another railroad. It will be the responsibility of the employee to report to inform each railroad for which the employee works of its service for another railroad.'' [14]

With regard to the question of whether employees will be required to provide information to each railroad for which they perform service, regarding consecutive days of covered service or service counted toward the 276-hour monthly limitation, as FRA stated in the Interim Interpretation, ''[t]he employee will be required to record service for Railroad A on the hours of service record for Railroad B, and vice versa.'' [15]

However, as also indicated in the Interim Interpretations, FRA will only consider enforcement action for excess service where service for another railroad is performed during the 48 or 72 hours off duty that an employee must receive after initiating an on-duty period each day for six or seven consecutive days, because the hours of service laws do not address service for another carrier during the other required off-duty periods.[16] For this reason, when an employee chooses of his or her own volition to perform covered service as a train employee for multiple railroads, the only time the service for the second railroad will be relevant to the first (and vice versa) will be when that employee reaches six or seven consecutive days of initiating an on-duty period for one railroad.

Therefore, an employee would not need to provide a cumulative total of time spent on multiple railroads for the purpose of compliance with the 276-hour monthly limitation. Likewise, an employee whose schedule required him to work five days followed by two days off could choose to work for another railroad during the two days off, because the employee had not yet initiated an on-duty period on six consecutive days, which would require a period of 48 hours during which the employee is unavailable for any service for any railroad carrier. Because the statute does not address employees working for multiple railroads, except during the required extended-rest period of 48 hours, it would not prohibit an employee's choice to work for a second railroad during off duty periods prior to triggering the extended rest requirement.

Finally, it should be noted that the statutory provision on hours of service civil penalties (49 U.S.C. 21303(a)(1)) provides that ''[a]n act by an individual that causes a railroad carrier to be in violation is a violation.'' An employee of Railroad A who works for Railroad B as a train employee during the required 48- or 72-hour rest period and who then goes on duty as a train employee for Railroad A causes Railroad A to be in violation of Sec. 21103(a)(4) and is individually liable for causing the violation by Railroad A and therefore subject to enforcement actions, including disqualification from safety-sensitive service if the violation is found to demonstrate that the individual is unfit for such service. See 49 CFR part 209, appendix A. If the employee willfully caused the railroad to be in violation, the employee would be subject to liability for a civil penalty. 49 U.S.C. 21304. Additionally, an employee may be held individually liable for willful failures to maintain accurate hours of service records under 49 CFR 228.9 and 228.11, including records documenting service for multiple railroads.

9. Does an employee ''Deliberately Misrepresent His or Her Availability'' simply by reporting for duty on a consecutive day in violation of sec. 21103(a)(4)?

In the Interim Interpretations, FRA states that, in general, an employee will not face enforcement action from FRA for accepting a call to report for duty when the employee knows he or she is close to the 276-hour monthly limitation on service and may not have sufficient time remaining to complete the assignment or duty tour. This enforcement policy does not apply, however, where there is ''evidence that the employee deliberately misrepresented his or her availability.'' [17] In its comment, AAR asks that FRA hold employees jointly responsible for violating the hours of service laws when accepting a call to report in excess of the ''consecutive-days'' limitations. FRA declines to adopt AAR's proposal.

Given that FRA's enforcement policy with regard to its hours of service recordkeeping regulations allows railroads to keep data related to the limitations on consecutive days, monthly service, and limbo time in a separate administrative ledger, rather than tracking the information daily on the record for each individual duty tour, railroads are in the best position to know whether or not an employee may report for duty. In addition, an employee who refused to report for duty when called to do so could be subjected to discipline by the railroad, if, for example, the employee incorrectly calculated or misunderstood the application of the provision to his or her current sequence of consecutive days, and believed that the statute prohibited the employee from reporting for duty. Furthermore, while the penalty provision of the hours of service laws provides for individual liability in violations of the hours of service laws, the substantive restrictions operate on ''a railroad carrier and its officers and agents.'' Employees have the obligation to provide accurate information to railroads regarding their service, and FRA will consider action as appropriate under the agency's Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws, 49 CFR part 209, appendix A, when employees fail to meet this obligation. Nonetheless, simply reporting for duty is insufficient to demonstrate that an employee ''deliberately misrepresented his or her availability.''

C. Questions Regarding the Prohibition on Communication by the Railroad With Train Employees and Signal Employees

In addition to increasing the statutory minimum off-duty period for train employees and signal employees to 10 hours, the RSIA requires that those 10 hours be uninterrupted by communication from the railroad by telephone, pager, or in any other way that could reasonably be expected to disrupt the employee's rest, except to notify an employee of an emergency situation. 49 U.S.C. 21103(e) (Sec. 21103(e)); 49 U.S.C. 21104(d) (Sec. 21104(d)). This requirement also applies to the interim releases of train employees. In addition, when a train

[14] 74 FR 30665, 30674 (June 26, 2009).

[15] *Id.*

[16] *Id.*

[17] 74 FR 30665, 30675 (June 26, 2009).

employee's statutory minimum off-duty period is longer than 10 hours as a result of time on duty and limbo time in excess of 12 hours, the additional time off duty is also subject to the prohibition.

1. Does the prohibition protect employees from any communication for the entirety of the off-duty period?

A number of comments express concern that, despite the new requirement that the statutory minimum off-duty periods for train employees and signal employees, and any period of interim release for train employees, must be free from communication likely to disturb rest, railroads may persist in repeatedly contacting the employee and disrupting the employee's rest.

The statute establishes that time off duty only qualifies as a statutory minimum off-duty period or period of interim release when the required minimum time is undisturbed. Because the statute does not require the statutory minimum off-duty period or interim release to be so designated in advance, the result is that an employee needs only 10 hours or more of time off duty and undisturbed by railroad communications at any point in the 24 hours prior to reporting for duty in order to be in compliance with the hours of service laws. Accordingly, a railroad may communicate with the employee at times between the end of the statutory minimum off-duty period and the initiation of the employee's on-duty period without violating the hours of service laws. FRA is aware that such practices may contribute to employee fatigue, and expects railroads to exercise discretion when contacting employees in this intermediate period. The RSIA provided FRA with limited regulatory authority, which FRA may consider exercising if substantial scientific evidence demonstrates that such communication is posing an unacceptable risk to railroad safety from employee fatigue.[18]

2. Is it a violation for a railroad to intentionally call an employee to delay that employee's ability to report for duty?

No, provided that the employee at some point has at least a statutory minimum off-duty period that is free from communication, before being required to report for duty. So long as an employee receives a statutory minimum off-duty period in the 24 hours prior to reporting for duty, communications outside of that period do not violate the prohibition on communication. Accordingly, it is not a violation for a railroad to contact an employee during other periods, as discussed above. The BLET and UTU joint comment argues that intentionally calling an employee in order to disrupt his or her off-duty period and require a new period to start violates Sec. 21103(e). As discussed above, only the statutory minimum off-duty period and periods of interim release for train employees are required to be uninterrupted by communications likely to disturb rest. Because the statutory minimum off-duty period does not need to be designated as such, the hours of service laws are not violated by these types of calls. For example, if an employee is called 8 hours after being released from duty, the statute will not be violated, but the employee must be provided 10 or more hours off duty (depending on the minimum statutory off duty period required for the employee) without such communication, beginning at the time the contact ended, to successfully complete a statutory off duty period and prevent any future activity for the railroad from commingling with the previous duty tour . If situations arise in which employees believe that a railroad is intentionally contacting an employee so that the employee's rest will have to be restarted (which restart delays the employee's eligibility to report for duty, increases the required off-duty period, and decreases the employee's income), such issues are a matter to be resolved between railroads and their employees through other mechanisms. So long as the rest period is restarted and the employee has 10 hours of uninterrupted rest before being called to report for duty, there is no violation of the statute.

3. For what purposes may an employee contact a railroad during the uninterrupted rest period?

In the Interim Interpretations, FRA stated that employees may choose to contact the railroad during the uninterrupted rest period, but that the railroad may only respond to the issues raised by the employee. However, FRA also flatly stated that railroads may not contact employees to delay an employee's assignment, with no reference to the preceding exception.[19] In their joint comment, BLET and UTU ask FRA to resolve the apparent contradiction between these two interpretations.

FRA recognizes that the prohibition extends to communication by the railroad, not to communication by the employee. Therefore, FRA concludes that an employee may contact a railroad about any issue, including issues related to establishing or delaying a time for the employee to report, without the communication from the employee interrupting the rest period. In addition, a railroad may return the employee's call, if requested to do so by the employee, for the employee's convenience and to prevent the employee having to make repeated phone calls; these calls also do not interrupt the employee's rest period. However, any return phone call made by the railroad must be limited to the terms established by the employee. For example, an employee may indicate when he or she wishes to be called back (such as, within the next hour, or, in 6 hours, if the employee were planning to go to sleep and preferred to have the return call after waking up). Further, absent an emergency, the return call must be limited to the subject of the employee's call. For example, if an employee calls during the statutory minimum off-duty period to schedule a vacation day, the railroad returns that call, and the railroad raises an issue not discussed by the employee, such as establishing a report for duty time, the employee's rest period has been interrupted, and the employee must have a new statutory minimum off-duty period in order to separate any subsequent service from the prior duty tour.

Additionally, the time spent in calls that do not interrupt the off-duty period as described above will not be time off duty and may commingle with a prior or subsequent duty tour if the content of the call is service for the railroad carrier. For instance, a call from an employee discussing the circumstances of the on-duty injury of one of his or her crewmembers is considered service for the railroad carrier, and therefore is service that is not time off duty and may commingle with a prior or subsequent duty tour. *See* Federal Railroad Administration, Hours of Service Interpretations, Operating Practices Technical Bulletin OP–04–29 (Feb. 3, 2004). To avoid having the time spent on the call commingling and therefore becoming time on duty, the employee must have a statutory minimum off-duty period between the call and any time on duty.

FRA has historically recognized that some types of communication between a railroad and an employee are ''at the behest of the railroad'' and are therefore properly considered to be service for the carrier that is not time off duty. In recognition of the realities of railroad

[18] As will be discussed below, a railroad may contact an employee in certain limited circumstances even during the portion of an off-duty period that is required to be undisturbed.

[19] 74 FR 30665, 30672 (June 26, 2009).

operations and the desirability of maximizing the employee's ability to know his or her next reporting time and therefore that employee's ability to plan his or her rest during the off-duty period, FRA has also provided an exception from this general rule for calls to establish or delay an employee's time to report. In enforcing the new prohibition on communication by the railroad with train employees and signal employees during certain of their off-duty periods, FRA will continue to abide by this longstanding interpretation, if the calls are initiated by the employee, and any call made by the railroad is in return of a call made by the employee, as requested by the employee and limited to the terms of the employee's request. While the establishment of a time to report for duty is service, FRA will extend its prior interpretation so that such communications are permitted and do not interrupt an off-duty period when the calls are initiated by the employee, and any call made by the railroad is in return of a call made by the employee, as requested by the employee and limited to the terms of the employee's request. As a result, employees may call a railroad during their statutory minimum off-duty period to establish or delay a time to report, and railroads may return these calls, if an employee requests a return call and the return call is limited to any terms established by the employee as to the time and the content of the call, and that contact will not be considered to have interrupted the rest period or to require that it be restarted, provided that the time at which the employee is required to report is after the required period of uninterrupted rest.

This interpretation, which FRA has articulated in part and communicated in correspondence already, allows employees to have greater predictability as to when they will go to work, and a greater opportunity to plan their off-duty time to obtain adequate rest and handle other personal tasks and activities. Employees are able to take assignments when their statutory minimum off-duty period will have been completed at or prior to the report time, even if they would not have been fully rested at the time of the call to report. Conversely, in some cases, employees may be able to schedule themselves for an assignment that will allow them some additional time off duty to obtain additional rest or attend to personal activities. However, this interpretation should not be read as allowing any railroad to adopt a policy that requires employees to call the railroad, or requires employees to grant the railroad permission to call the employee during the statutory off-duty period. Employees who do not call the railroad, and do not choose to receive communication from the railroad, during the period of uninterrupted rest, must not be called by the railroad to establish a report time until after 10 hours of uninterrupted rest, and the employee must not be disciplined or otherwise penalized for that decision.

FRA is aware that, having provided employees with an avenue for receiving information relating to their time to report during their statutory minimum off-duty period, there may be instances where a railroad, or an individual railroad manager, may seek to require that the employee contact the railroad during his or her statutory off-duty period to obtain the employee's next assignment. In circumstances where a railroad discriminates against an employee for refusing to violate a railroad safety law by failing to report after a disruption of rest caused the employee to not have a statutory minimum off-duty period, that action could constitute a violation of 49 U.S.C. 20109, enforced by the U.S. Department of Labor. Where credible evidence indicates that a railroad disrupted an employee's statutory minimum off-duty period without the employee having initiated the communication and requested a return call and yet allowed the employee to report, without restarting the rest period and providing the required uninterrupted rest, FRA will consider appropriate enforcement action. FRA expects that railroads will not attempt to coerce employees into authorizing communications that disrupted an employee's rest. Where evidence shows that a railroad made prohibited communications to an employee, because the employee did not initiate the communication, FRA may consider appropriate enforcement action under 49 U.S.C. 21103 and 21104. Employees must report unauthorized communications as an activity on their hours of service record for the duty tour following the communication. 49 CFR 228.11(b)(9).

4. May the railroad return an employee's communication during the rest period without violating the prohibition on communication?

As discussed above in section IV.C.3, the railroad may return an employee's communication during the rest period without violating the prohibition on communication, so long as the return communication is authorized by the employee and on the same topic as the employee's communication.

5. May the railroad call to alert an employee to a delay (set back) or displacement?

As discussed above in section IV.C.3, the railroad may only communicate with an employee if it is in reply to a communication from the employee, is authorized by the employee, and is on the same topic as the employee's communication. Accordingly, the railroad may only call to alert an employee to a delay (set back) or displacement if the employee previously communicated with the railroad on that issue during the rest period and authorized a return communication.

6. May an employee provide advance permission for railroad communications?

The BLET and UTU joint comment, as well as an individual commenter, ask if FRA will permit an employee to preemptively grant his or her employing railroad the authorization to contact the employee on certain matters. As was discussed in the previous response, employees may contact a railroad for any purpose, including establishing a time to report, and the railroad may return a call initiated by the employee, if the employee requests a return call, subject to the conditions discussed above. Because communication by the railroad is only allowed in response to specific communication initiated by the employee, an employee may not consent in advance to communication from the railroad.

It is important to note, however, that if a railroad communicates with an employee when not requested to do so by the employee, or discusses with the employee matters beyond the subject of the employee's initial call, the employee's rest period has been disturbed, but it is not necessarily a violation of the statute. If an unauthorized communication is made, railroads have the option of providing a new statutory minimum off-duty period to avoid violating the statute.

Additionally, railroads are not required under the statute to communicate with their employees during the period of uninterrupted rest. If a railroad concludes that it is too burdensome to determine in each instance the specific times within which an employee has requested a return call, and any limitations on the subject matter of the call, that railroad may decide simply not to contact any train employees or signal employees during their statutory minimum off-duty periods or periods of interim release.

7. Does the prohibition on communication apply to the extended rest required after 6 or more consecutive days initiating an on-duty period?

No. The statute is clear that the prohibition applies only to the statutory minimum off-duty period for signal employees and train employees as well as to interim releases and additional time off duty required by subsection (c)(4) for train employees. While one commenter requests that FRA extend the prohibition to the extended rest required by Sec. 21103(a)(4), FRA is unable to do so through the interpretation of the statute, because the statutory language itself specifically identifies those periods of rest when the railroad must not communicate with an employee in a way that could reasonably be expected to disrupt the employee's rest, and the 48- and 72-hour extended-rest periods are not included within the prohibition.

8. Does the prohibition on communication apply differently to forms of communication other than phone calls?

No. The prohibition on communication applies equally to any form of communication, including but not limited to phone calls, emails, text messages, voicemail, leaving a message at a hotel, or messages placed under the door of a hotel room by hotel staff.

9. May the railroad provide information that can be accessed at the employee's option?

Yes. FRA encourages provision of information that can be accessed at the employee's option, especially in the case of unscheduled or uncertain assignments, so that the employee can plan rest.

Because the alerts provided by most devices when an email or text message is received might reasonably be expected to disturb an employee who may be trying to obtain rest, such communications are generally prohibited communications. However, where the device in question is railroad-provided, such that it is only used for railroad business, employees have the option of turning the device off without impeding their ability to receive personal messages that they would want to receive even during rest. Therefore, the provision of information by text message or email to such a device is not a prohibited communication. Likewise, a railroad-provided Web site that the employee may voluntarily access could provide similar information. However, the employee may not be required to receive any communication of any sort, to access information of any kind, or to respond in any way to the information provided.

D. Questions Regarding the 276-Hour Monthly Limit on Service for the Railroad by Train Employees

BLET and UTU request clarification on the 276-hour limit on time spent on duty, waiting for or in deadhead transportation to the place of final release, or in any other mandatory service for the railroad during a calendar month. The comment notes FRA's discussion of the issue in Section IV.C.6 of the Interim Interpretations, in which FRA stated that completing hazardous materials records is a task that falls within the category of ''other mandatory service for the carrier[.]'' [20] The unions request clarification that all Federal recordkeeping requirements are considered ''other mandatory service'' and, therefore, will be counted towards an employee's 276-hour limitation for each month. FRA confirms that if an employee has the duty to carry out a Federal recordkeeping requirement applicable to a railroad, action by the employee to carry out the requirement is to be considered ''other mandatory service'' and, therefore, will be counted towards the employee's 276-hour limitation for each month. In the Interim Interpretations, FRA provided the act of completing a record on the transfer of hazardous material, as required by Transportation Security Administration regulations, as one example of ''other mandatory service for a railroad carrier[.]'' This example is simply illustrative of the sort of activities that are included as ''other mandatory service,'' and not an exception from FRA's general interpretation.

The BLET and UTU joint comment then asks if attendance at a rules class can avoid being considered as other mandatory service for the carrier if the employee is given the discretion on when to schedule and complete the training and the railroad simply provides a deadline date for completion of the training. FRA confirms that this arrangement is consistent with FRA's position taken in the Interim Interpretations, and remains FRA's interpretation: if an employee has the opportunity to schedule such training at a time that is convenient for him or her, then the time spent training in these circumstances would not be counted for the purposes of the 276-hour limitation.[21] Although training under the given circumstances can be excluded from the 276-hour monthly limitation, it is nonetheless service for the railroad carrier and can commingle with covered service. As such, an employee must communicate the beginning and ending times of such activities with the railroad, and if a statutory off duty period does not exist between the activity and covered service the time spent in these activities will commingle becoming time on duty which will be included in the 276-hour monthly limitation.

Another commenter, AAR, seeks clarification with respect to an employee's responsibility to comply with the 276-hour monthly limitation, and asks that FRA consider an employee to have ''deliberately misrepresented his or her availability'' when ''accepting a full-duty tour after completing an hours of service record for a prior duty tour showing that the employee does not have sufficient hours for another full duty tour.'' FRA declines to do so. As was discussed in Section IV.B.10, above, in response to AAR's similar comment regarding the ''consecutive-days'' limitations, given that FRA's enforcement policy with regard to its hours of service recordkeeping regulation allows railroads to keep ''consecutive-days'' limitation and monthly-service and limbo-time limitation data in a separate administrative ledger, rather than tracking the data daily on the record for each individual duty tour, railroads are in the best position to know whether or not an employee may report to perform service for the railroad. Additionally, while the penalty provision of the hours of service laws provides for individual liability for violation of the hours of service laws, the substantive restrictions operate on ''a railroad carrier and its officers and agents.'' Employees have the obligation to provide accurate information to railroads regarding their service, and FRA will consider action as appropriate under the agency's Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws, 49 CFR part 209, appendix A, when employees fail to meet this obligation. However, simply reporting to perform service for the railroad is insufficient to demonstrate that an employee ''deliberately misrepresented his or her availability.''

One individual commenter asks if an individual who works for multiple railroads will be required to total all service for all of these railroads to calculate whether that individual has reached the 276-hour limitation. Because the hours of service laws do not restrict an employee's choice, of his or her own volition, to perform covered service for multiple railroad carriers

[20] 74 FR 30665, 30676 (June 26, 2009).

[21] See 74 FR 30665, 30675 (June 26, 2009).

(with the exception of Sec. 21103(a)(4), as discussed above in the interpretations governing that provision), the 276-hour limitation applies only to the employee's service for each railroad. Such an employee would not need to total all service for all of these railroads, but instead would be subject to a separate 276-hour limitation for each railroad for which he or she performs covered service as a train employee. However, as discussed in Section IV.B.7 above, for the purposes of compliance with Sec. 21103(a)(4), employees are responsible for reporting all service for any railroad carrier to each of their railroad carrier employers. While FRA has previously acknowledged its lack of authority to regulate employees who choose to be employed by multiple railroads, except with regard to Sec. 21103(a)(4), FRA notes that an employee working for multiple railroads may nonetheless be subject to an excessive risk of human factors accidents caused by fatigue. Further, FRA does have the authority to pursue individual liability enforcement action against individuals who willfully fail to report all service for any railroad carrier or individuals who perform service for any railroad carrier during the extended rest required by Sec. 21103(a)(4).

E. Additional Issues Raised by Commenters

1. Statutory Changes

A large number of individual commenters wrote to express displeasure with the RSIA and its changes to the previous hours of service requirements. While FRA was granted some limited regulatory authority to address hours of service issues, any possible future FRA regulations, that might adjust the existing limitations or otherwise alter the application of the new laws, are outside the scope of these final interpretations of the existing statute.

2. Waivers

Several commenters seek waivers of the mandatory rest requirement in Sec. 21103(a)(4) for specific subsets of the rail industry. Whatever the merits of these waiver requests, they are beyond the scope of this notice. Petitions for the waivers provided for in Sec. 21103(a)(4), like petitions for waiver of FRA's safety regulations, are handled by FRA's Railroad Safety Board. 49 U.S.C. 20103(d); 49 CFR 211.41.

3. Definition of ''Covered Service''

The BLET and UTU joint comment requests FRA consider all ''yardmaster and similar positions'' covered service. ''Covered service'' refers to the functions performed by train employees, signal employees, and dispatching service employees. See 49 U.S.C. 21101, which defines these functions, and 49 CFR part 228, appendix A, which defines covered service in reference to these functions. Regardless of job title, an individual only performs covered service to the extent that the individual performs a function within one of the three statutory definitions. Therefore, FRA may not mandate that service outside of those three functions is covered service, or that employees with a certain job title will automatically be considered to have performed covered service.

The BRS comment requests clarification on what constitutes covered service for a signal employee. The comment suggests that FRA has been interpreting the statute to apply only to signal employees who work with ''energized conductors.'' However, this understanding is incorrect. While a prior technical bulletin (Federal Railroad Administration, The Federal Hours of Service Law and Signal Service, Technical Bulletin G–00–02 (2000)) did refer to ''energized conductors,'' it did so in the context of demonstrating types of activities that are and are not covered service, comparing work on those conductors to work laying cable on a new system. The sentence in the bulletin was not exclusive, and does not indicate an interpretation by FRA that a signal system must be ''energized'' in order for work installing, repairing, or maintaining that system to be considered covered service.

One individual commenter asks whether ''mechanical employees'' are subject to the hours of service requirements. While the statute changed the definition of ''signal employee'' to include those who are not employees of a railroad carrier, it did not alter the scope of what constitutes covered service that would subject an individual to the limitations within the statute. Accordingly, if service was considered covered service prior to the passage of the RSIA, that service remains covered service under the new statute. Additionally, some employees previously not subject to the hours of service laws that perform functions considered to be signal covered service but are not employed by a railroad carrier will now be covered by the hours of service laws. Employees who are generally considered to be ''mechanical employees'' may perform covered service within any of the three functional definitions, depending on the functions that the employee actually performs. For example, a mechanical employee who performs the functions of a hostler is subject to the hours of service limitations for train employees in 49 U.S.C. 21103, while a mechanical employee who performs cab signal tests is subject to the hours of service limitations for signal employees in 49 U.S.C. 21104 (Sec. 21104).

4. Exclusivity of Signal Service Hours of Service

The BRS expresses concern that, in categorically exempting signal employees from any hours of service rules promulgated by any Federal authority other than FRA, Congress created a ''loophole'' allowing a vehicle requiring a commercial driver's license to be driven by a ''signal employee'' who does not perform any covered service, with the result that such an employee is not covered by any hours of service limitations. The comment correctly notes that Congress did not intend to remove such individuals entirely from non-FRA Federal hours of service restrictions.

The solution is found within the statutory text at Sec. 21104(e), which states that ''*signal employees* operating motor vehicles shall not be subject to any hours of service rules, duty hours, or rest period rules promulgated by any Federal authority, including the Federal Motor Carrier Safety Administration, other than the Federal Railroad Administration.'' (Emphasis added.) The subsection headed ''Exclusivity'' applies only to *signal employees,* and signal employees are subject to the restrictions on hours of service provided in Sec. 21104(a). Therefore, the statute does not allow an individual subject to the exemption granted at Sec. 21104(e) not to be subject to Sec. 21104(a). FRA recognizes that this application may result in some difficulty for an employee who generally works as a signal employee (''installing, repairing, or maintaining signal systems'') but happens in a particular duty tour only to drive a vehicle requiring a commercial driver's license, without performing any functions within the definition of a ''signal employee'' in that duty tour, because such an employee remains subject to Federal Motor Carrier Safety Administration (FMCSA) limitations and recordkeeping requirements. Sec. 21104(a). FRA is open to working with FMCSA in the future to limit or eliminate this overlap, but such efforts are outside the scope of this interpretation of the statute.

5. Commuting Time

The BLET and UTU joint comment requests clarification of how FRA's prior

treatment of time spent commuting will continue in light of changes to the statute. FRA allows a 30-minute period for commuting at the away-from-home terminal, from an employee's point of final release to railroad-provided lodging, that will not be considered a deadhead, but rather, commuting time that is part of the statutory off-duty period, provided that the travel time is 30 minutes or less, including any time the employee spends waiting for transportation at the point of release or for a room upon arrival at the lodging location. *See* Federal Railroad Administration, Hours of Service Interpretations, Operating Practice Technical Bulletin OP–04–03 (Feb. 3, 2004). The hypothetical situation presented in the comment involves a train employee, finally released at the away-from-home terminal, being instructed to report 10 hours after the time of final release with no further communication from the railroad. In the hypothetical, the travel time to the railroad-provided lodging is less than 30 minutes, and the room for the employee is ready at the time the employee arrives. FRA sees no reason to depart from the prior interpretation of this situation. Accordingly, travel time of 30 minutes or less to railroad-provided lodging will be considered commuting, not deadheading, and therefore the employee's final release time will be established before the employee is transported to lodging. Similarly, in this hypothetical, an employee may depart for his or her reporting point in order to arrive at the reporting point 10 hours after his or her final release, so long as the travel time from the place of railroad-provided lodging to the reporting point is 30 minutes or less and so long as there is no additional communication from the railroad which interrupts the employee's off-duty period. Commuting time is considered part of the statutory off-duty period.

6. Application of Exception to Limitation on Certain Limbo Time

The RSIA's amendments to Sec. 21103 added a limitation, effective October 16, 2009, of 30 hours per calendar month, on the amount of time each employee may spend in a particular category of limbo time—that is, time that is neither on-duty nor off-duty; namely, when the total of time on duty time and time spent either waiting for deadhead transportation or in deadhead transportation from a duty assignment to the place of final release exceeds 12 consecutive hours. 49 U.S.C. 21103(c)(1)(B). However, the amendments also include an exception from the limitation at Sec. 21103(c)(2), which excludes delays caused by casualty, accident, act of God, derailment, major equipment failure preventing the train from advancing, or other delays caused by a source unknown and unforeseeable to the railroad carrier or its officer or agent in charge of the employee when the employee left a terminal.

In their joint comment, BLET and UTU request clarification on whether this exception also applies to Sec. 21103(c)(4), which requires additional rest for train employees if time spent on duty, waiting for deadhead transportation to a point of final release, and in deadhead transportation to a point of final release exceeds 12 hours. By the express language of the statute, the exception does not apply to Sec. 21103(c)(4). The language introducing the exception expressly states that it applies to ''paragraph (1)'' (i.e., Sec. 21103(c)(1)) and therefore presumably does not apply to paragraph (4) (i.e., Sec. 21103(c)(4)); had Congress wished for the exception to apply to paragraph (4), it would have written the law accordingly.

V. Portions of FRA's Interim Interpretations of the Hours of Service Laws on Which Comments Were Not Received and Which Are Incorporated in This Final Interpretation Essentially Without Change [22]

Several of FRA's Interim Interpretations received no comments and are not being revised in these final interpretations. Therefore, they are still applicable as previously published. These policies and interpretations are reprinted below for convenience. Those interim interpretations which are no longer effective as a result of these final interpretations have been replaced in this section with a reference to the section in this document where the relevant final interpretation is discussed. In some cases, the discussion of these policies and interpretations has been revised to reflect other changes in FRA's policies and interpretations discussed in this document, or in light of FRA's subsequent promulgation of its regulations governing the hours of service for employees providing intercity or commuter passenger rail transportation. More information relating to the justification for these policies may be found in FRA's Interim Interpretations. 74 FR 30665 (June 26, 2009).

A. Questions Related to the Prohibition on Communication by the Railroad With Train Employees and Signal Employees

1. Does the prohibition on communication with train employees and signal employees apply to every statutory off-duty period no matter how long the employee worked?

Yes, except for the 48- or 72-hour rest requirement. This prohibition on communication applies to every off-duty period of at least 10 hours under Sec. 21103(a)(3) or 21104(a)(2) and to any additional rest required for a train employee when the sum of on-duty time and limbo time exceeds 12 hours under Sec. 21103(c)(4). For train employees, it also applies to every lesser off-duty period that qualifies as an interim release.

2. Is the additional rest for a train employee when on-duty time plus limbo time exceeds 12 hours mandatory, or may the employee decline it?

The additional rest is mandatory and may not be declined.

3. If an employee is called to report for duty after having 10 hours of uninterrupted time off duty, but then receives a call canceling the call to report before he or she leaves the place of rest, is a new period of 10 uninterrupted hours off duty required?

If the employee has not left the place of rest, the employee has not accrued on-duty time and would still be off duty, with the exception that the time spent in multiple calls could in certain circumstances commingle with a future duty tour.

4. What if the call is cancelled just one minute before report-for-duty time?

Although the employee will almost certainly have left the place of rest, the result to this scenario is the same as the result in the preceding question, in that the employee will not have accrued any time on duty.

5. What if the employee was told before going off duty to report at the end of required rest (either 10 hours or 48 or 72 hours after working 6 or 7 days), and is released from that call prior to the report-for-duty time?

The answer to this scenario is the same as the answer to the two preceding questions.

[22] For the present iteration, FRA made a few minor changes to the text that appeared in the Interim Interpretations. For example, FRA deleted material that had become obsolete, e.g., references to the 40-hour per month limit on certain limbo time since that limit expired on October 15, 2009. In addition, it was necessary to add language in parentheses to reflect that a reference to sections ''above'' meant sections of the Interim Interpretations. Further, FRA sometimes added a short ''yes'' or ''no'' answer before the previously published longer answer.

6. Are text messages or email permitted during the rest period?

(This question is answered in section IV.C.7 and IV.C.8 above.)

7. May the railroad return an employee's call during the rest period without violating the prohibition on communication?

(This question is answered in section IV.C.4 above.)

8. May the railroad call to alert an employee to a delay (set back) or displacement?

(This question is answered in section IV.C.5 above.)

9. If the railroad violates the requirement of undisturbed rest, is the undisturbed rest period restarted from the beginning?

Yes. (But see section IV.C.1, describing the time to which the prohibition on communication applies.)

10. Should any violation of undisturbed rest be documented by a record?

Yes. The communication and the time involved in it must be recorded as an activity on the employee's hours of service record, as required by 49 CFR 228.11(b)(9) for train employees and 49 CFR 228.11(e)(9) for signal employees.

(This question is discussed in more detail in section IV.C.1 and IV.C.2 above.)

11. Is the additional rest required when on-duty time plus limbo time exceeds 12 hours (during which communication with an employee is prohibited) to be measured only in whole hours, so that the additional rest requirement is not a factor until the total reaches 13 hours?

No. The additional undisturbed time off that an employee must receive includes any fraction of an hour that is in excess of 12 hours.

B. Questions Related to the Requirements Applicable to Train Employees for 48 or 72 Hours Off at the Home Terminal

1. Is a ''Day'' a calendar day or a 24-hour period for the purposes of this provision?

(This question is answered in section IV.B.1 above.)

2. If an employee is called for duty but does not work, has the employee initiated an on-duty period? If there is a call and release? What if the employee has reported?

(This question is answered in section IV.B.5 above.)

3. Does deadheading from a duty assignment to the home terminal for final release on the 6th or 7th day count as a day that triggers the 48-hour or 72-hour rest period requirement?

(This question is answered in section IV.B.2 and IV.B.3 above.)

4. Does attendance at a mandatory rules class or other mandatory activity that is not covered service but is non-covered service, count as initiating an on-duty period on a day?

No. As in the previous question, the rules class or other mandatory activity is other service for the carrier (non-covered service) that is not time on duty and would not constitute initiating an on-duty period if it is preceded and followed by a statutory off-duty period.

Likewise, if the rules class or other mandatory activity commingled with covered service during either the previous duty tour or the next duty tour after the rules class (because there was not a statutory off-duty period between them), the rules class or other mandatory activity would not itself constitute initiating a separate on-duty period, but would be part of the same on-duty period with which it is commingled.

This question is discussed in more detail in section IV.B.6 above.

5. If an employee is marked up (available for service) on an extra board for 6 days but only works 2 days out of the 6, is the 48-hour rest requirement triggered?

No. The employee must actually initiate an on-duty period. Being marked up does not accomplish this unless the employee actually reports for duty.

6. If an employee initiates an on-duty period on 6 consecutive days, ending at an away-from-home terminal and then has 28 hours off at an away-from-home terminal, may the employee work back to the home terminal? The statute says that after initiating an on-duty period on 6 consecutive days the employee may work back to the home terminal on the 7th day and then must get 72 hours off, but what if the employee had a day off at the away-from-home terminal after the 6th day?

The statute says that the employee may work on the 7th day if the sixth duty tour ends at the away-from-home terminal, but that the employee must then have 72 hours of time at the home terminal in which he or she is unavailable for any service for any railroad carrier. If the employee first has at least 24 hours off at the away-from-home terminal, the consecutiveness is broken, and the employee has not initiated an on-duty period for 7 consecutive days and would not be entitled to 72 hours off duty after getting back to the home terminal. However, the time off at the away-from-home terminal would not count toward the 48 hours off duty that the employee must receive after getting back to the home terminal.

7. May an employee who works 6 consecutive days vacation relief at a ''Temporary Home Terminal'' work back to the regular home terminal on the 7th day?

Yes, the employee may initiate an on-duty period on the seventh day and then receive 72 hours off at the home terminal. FRA believes this is consistent with the statutory purpose of allowing the employee to have the extended rest period at home. To that end, although the statute refers to the home terminal, FRA expects that in areas in which large terminals include many different reporting points at which employees go on and off duty, the railroad would make every effort to return an employee to his or her regular reporting point, so that the rest period is spent at home.

C. Questions Related to the 276-Hour Monthly Maximum for Train Employees of Time on Duty, Waiting for or Being in Deadhead Transportation to Final Release, and in Other Mandatory Service for the Carrier

1. If an employee reaches or exceeds 276 hours for the calendar month during a trip that ends at the employee's away-from-home terminal, may the railroad deadhead the employee home during that month?

The literal language of the statute might seem to prohibit deadheading an employee who has already reached or exceeded the 276-hour monthly maximum, because time spent in deadhead transportation to final release is part of the time to be calculated toward the 276-hour maximum, and one of the activities not allowed after the employee reaches 276 hours. However, the intent of the statute seems to favor providing extended periods of rest at an employee's home terminal. Therefore, in most cases, FRA would allow the railroad to deadhead the employee home in this circumstance, rather than requiring the employee to remain at an away-from-home terminal until the end of the month.

FRA expects the railroad to make every effort to plan an employee's work so that this situation would not regularly arise, and FRA reserves the right to take enforcement action if a pattern of abuse is apparent.

2. How will FRA apply the 276-hour cap to employees who only occasionally perform covered service as a train employee, but whose hours, when combined with their regular shifts in non-covered service, would exceed 276 hours?

This provision in the RSIA does not specifically provide any flexibility for employees who only occasionally perform covered service as a train employee. Such employees would still be required, as they are now, to complete an hours of service record for every 24-hour period in which the employee performed covered service, and the employee's hours will continue to be limited as required by the statute for that 24-hour period. See 74 FR 25330, 25348 (May 27, 2009), 49 CFR 228.11(a).

FRA will likely exercise some discretion in enforcing the 276-hour monthly limitation with regard to employees whose primary job is not to perform covered service as a train employee, as most of the hours for such employees would be comprised of the hours spent in the employee's regular ''non-covered service'' position, which hours are not otherwise subject to the limitations of the statute. However, FRA will enforce the 276-hour limitation with regard to such employees if there is a perception that a railroad is abusing it.

3. Does the 276-hour count reset at midnight on the first day of a new month?

Yes. The statute refers to a calendar month, so when the month changes, the count resets immediately, as in the following example:

Employee goes on duty at 6 p.m. on the last day of the month, having previously accumulated 270 hours for that calendar month. By midnight, when the month changes, he has worked an additional 6 hours, for a total of 276 hours. The remaining hours of this duty tour occur in the new month and begin the count toward the 276-hour maximum for that month, so the railroad is not in violation for allowing the employee to continue to work.

4. May an employee accept a call to report for duty when he or she knows there are not enough hours remaining in the employee's 276-hour monthly limitation to complete the assignment or the duty tour, and it is not the last day of the month, so the entire duty tour will be counted toward the total for the current month?

It is the responsibility of the railroad to track an employee's hours toward the monthly limitation, so the employee is not the one in the best position to determine whether he or she has sufficient time remaining in the monthly limitation to complete a duty tour for which he or she is called. Therefore, the employee would generally not be in trouble with FRA for accepting the call, absent evidence that the employee deliberately misrepresented his or her availability. The railroad will be in violation of the new hours of service laws if an employee's cumulative monthly total exceeds 276 hours. However, it could be a mitigating factor in some situations if the railroad reasonably believed the employee might be able to complete the assignment before reaching the 276-hour limitation.

- *Scenario 1:* Employee is called for duty with 275 hours already accumulated. It is only the 27th day of the month, so the entire period will be in the current month. It was probably not reasonable to assume that any assignment could be completed in the remaining time.
- *Scenario 2:* Again the 27th day of the month. This time the employee has only accumulated 264 hours toward the 276-hour monthly limitation. In this instance, the railroad may have expected that the employee could complete the covered service and deadhead to the home terminal within the remaining time. If that does not happen, the railroad is in violation, but enforcement discretion or mitigation of any penalties assessed will be considered if the railroad made a reasonable decision.

5. What activities constitute ''Other Mandatory Service for the Carrier,'' which counts towards the 276-hour monthly limitation?

FRA recognizes that if every activity in which an employee participates as part of his or her position with the railroad is counted toward the 276-hour monthly maximum, it could significantly limit the ability of both the railroad to use the employee, and the employee to be available for assignments that he or she would wish to take, especially in the final days of a month. This has been raised as a matter of concern since enactment of the RSIA.

In particular, there are activities that may indirectly benefit a railroad but that are in the first instance necessary for an employee to maintain the status of prepared and qualified to do the work in question. In some cases these activities are compensated in some way, and in some cases not. These activities tend not to be weekly or monthly requirements, but rather activities that occur at longer intervals, such as audiograms, vision tests, optional rules refresher classes, and acquisition of security access cards for hazardous materials facilities. Most of these activities can be planned by employees within broad windows to avoid conflicts with work assignments and maintain alertness. Railroads are most often not aware of when the employee will accomplish the activity.

Therefore, for the purposes of this provision, FRA will require that railroads and employees count toward the monthly maximum those activities that the railroad not only requires the employee to perform but also requires the employee to complete immediately or to report at an assigned time and place to complete, without any discretion in scheduling on the part of the employee.

Those activities over which the employee has some discretion and flexibility of scheduling would not be counted for the purposes of the 276-hour provision, because the employee would be able to schedule them when he or she is appropriately rested. FRA expects that railroads will work with their employees as necessary so that they can schedule such activities and still obtain adequate rest before their next assignment.

When any service for a railroad carrier is not separated from covered service by a statutory minimum off-duty period, the other service will commingle with the covered service, and therefore be included as time on duty. As time on duty, such time will count towards the monthly limit of 276 hours.

6. Does time spent documenting transfer of hazardous materials (Transportation Security Administration requirement) count against the 276-hour monthly maximum?

Yes. This example is a specific application of the previous question and response concerning ''other mandatory service for the carrier.'' The activity of documenting the transfer of a hazardous material pursuant to a Transportation Security Administration requirement is mandatory service for the carrier, and a mandatory requirement of the position for employees whose jobs involve this function. Although the requirement is Federal, compliance with it is a normal part of an employee's duty tour, which must be completed as part of the duty tour, and the employee does not have discretion in when and where to complete this requirement. Time spent in fulfilling this requirement is part of the maximum allowed toward the 276-hour monthly maximum.

D. Other Interpretive Questions Related to the RSIA Amendments to the Old Hours of Service Laws

1. Does the 30-hour monthly maximum limitation on time awaiting and in deadhead transportation to final release only apply to time awaiting and in deadhead transportation after 12 consecutive hours on duty?

No. Sec. 21103(c)(1)(B) provides that ''[a] railroad may not require or allow an employee * * * to exceed 30 hours per month—(i) waiting for deadhead transportation; or (ii) in deadhead transportation from a duty assignment to a place of final release, following a period of 12 consecutive hours on duty * * *.'' The intent of this provision is to prevent situations in which employees are left waiting on trains for extended periods of time awaiting deadhead transportation, and then in the deadhead transportation. This purpose would be frustrated if none of the limbo time is counted toward the limitation unless the on-duty time for the duty tour is already at or exceeding 12 hours, as an employee who has accumulated 11 hours and 59 minutes in his or her duty tour could be subjected to limitless time awaiting and in deadhead transportation.

FRA will interpret this provision to include all time spent awaiting or in deadhead transportation to a place of final release that occurs more than 12 hours after the beginning of the duty tour, minus any time spent in statutory interim periods of release. For example, if an employee is on duty for 11 hours 30 minutes, and then spends an additional 3 hours awaiting and in deadhead transportation to the point of final release, for a total duty tour of 14 hours and 30 minutes, 2 hours and 30 minutes of the time spent awaiting or in deadhead transportation will be counted toward the 30-hour monthly limit.

2. Did the RSIA affect whether a railroad may obtain a waiver of the provisions of the new hours of service laws?

Yes, but FRA's authority, delegated from the Secretary, to waive provisions of the hours of service laws as amended by the RSIA remains extremely limited. 49 CFR 1.49.

The RSIA left intact the longstanding, though limited, waiver authority at 49 U.S.C. 21102(b), which authorizes the exemption of railroads ''having not more than 15 employees covered by'' the hours of service laws ''[a]fter a full hearing, for good cause shown, and on deciding that the exemption is in the public interest and will not affect safety adversely. The exemption shall be for a specific period of time and is subject to review at least annually. The exemption may not authorize a carrier to require or allow its employees to be on duty more than a total of 16 hours in a 24-hour period.''

The RSIA amended the one other, even narrower waiver provision in the old hours of service laws and added three more equally narrow new waiver provisions. In particular, the RSIA revised 49 U.S.C. 21108, Pilot projects, originally enacted in 1994, involving joint petitions for waivers related to pilot projects under 49 U.S.C. 21108, primarily to provide for waivers of the hours of service laws both as in effect on the date of enactment of the RSIA and as in effect nine months after the date of enactment. Waivers under this section are intended to enable the establishment of one or more pilot projects to demonstrate the possible benefits of implementing alternatives to the strict application of the requirements of the hours of service laws, including requirements concerning maximum on-duty and minimum off-duty periods. The Secretary may, after notice and opportunity for comment, approve such waivers for a period not to exceed two years, if the Secretary determines that such a waiver is in the public interest and is consistent with railroad safety. Any such waiver, based on a new petition, may be extended for additional periods of up to two years, after notice and opportunity for comment. An explanation of any waiver granted under this section shall be published in the **Federal Register**.

The first of the three new waiver provisions, 49 U.S.C. 21109(e)(2), authorizes temporary waivers of that section in order ''if necessary, to complete'' a pilot project mandated by that subsection. To date, FRA has not conducted either of the specific pilot projects mandated by that section, because FRA has not received any waiver requests from a railroad, and its relevant labor organizations or affected employees, seeking to participate in these projects. FRA still seeks to complete these projects, if a railroad were willing to implement the necessary procedures, and the appropriate waiver could be designed.

The second new waiver provision, 49 U.S.C. 21103(a)(4), provides limited authority to grant a waiver of one provision that it adds to the old hours of service laws. That provision is the requirement that an employee receive 48 hours off duty at the employee's home terminal after initiating an on-duty period on 6 consecutive days, 72 hours off duty at the employee's home terminal after initiating an on-duty period on 7 consecutive days, etc. This provision was discussed in section IV.B of the Interim Interpretations as well as section IV.B and V.B, above. FRA may waive this provision, and has done so in a number of instances in response to petitions received, if a collective bargaining agreement provides for a different arrangement and that arrangement is in the public interest and consistent with railroad safety. A railroad and its labor organization(s) or affected employees should jointly submit information regarding schedules allowed under their collective bargaining agreements that would not be permitted under this provision, and supporting evidence for the conclusion that it is in the interest of safety. Of course, a waiver is not needed for a schedule that would not violate this provision. For example, if a schedule provides that an employee works 4 consecutive days and then has one day off, the schedule would not violate the new hours of service laws, because the employee would not have initiated an on-duty period on 6 consecutive days, so 48 hours off duty would not be required.

The third and last new waiver provision authorizes waivers of the prohibition on communication during off-duty periods with respect to train employees of commuter or intercity passenger railroads if it is determined that a waiver will not reduce safety and is necessary to maintain such a railroad's efficient operation and on-time performance. This waiver provision is no longer applicable, because such employees are now subject to FRA's hours of service regulation for train employees providing commuter or intercity rail passenger transportation, and are therefore no longer subject to the statutory uninterrupted rest requirement. 49 CFR 228.413.

Issued in Washington, DC, on February 22, 2012.

Joseph C. Szabo,

Administrator.

[FR Doc. 2012–4732 Filed 2–28–12; 8:45 am]

BILLING CODE 4910–06–P

FEDERAL REGISTER

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The President

Memorandum of February 28, 2012—Delegation of Waiver Authority Under Section 1022(a)(4) of the National Defense Authorization Act for Fiscal Year 2012

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The President

Memorandum of February 28, 2012

Delegation of Waiver Authority Under Section 1022(a)(4) of the National Defense Authorization Act for Fiscal Year 2012

Memorandum for the Attorney General

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to you the authority conferred upon the President by section 1022(a)(4) of the National Defense Authorization Act for Fiscal Year 2012, Public Law 112–81, to waive certain requirements of the Act. You shall exercise this authority in consultation with other senior national security officials, including the Secretaries of State, Defense, Homeland Security, Director of National Intelligence, Chairman of the Joint Chiefs of Staff, Director of the Central Intelligence Agency, and Director of the Federal Bureau of Investigation, as well as any other official I may designate.

You are authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, February 28, 2012

[FR Doc. 2012–5120
Filed 2–28–12; 2:00 pm]
Billing code 4410–19–P

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