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

WHERE: Office of the Federal Register
Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 26, 121, and 129

[Docket No. FAA–2006–24281; Amendment Nos. 26–6, 121–360, 129–51]

RIN 2120–AI05

Aging Airplane Program: Widespread Fatigue Damage; Technical Amendment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The FAA is correcting a final rule published on November 15, 2010. That rule required design approval holders of certain existing airplanes and all applicants for type certificates of future transport category airplanes to establish a limit of validity of the engineering data that supports the structural maintenance program (hereinafter referred to as LOV). It also required that operators of any affected airplane incorporate the LOV into the maintenance program for that airplane. This document corrects errors in codified text of that document.

DATES: Effective May 24, 2012.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Walter Sippel, ANM–115, Airframe/Cabin Safety Branch, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2774; facsimile (425) 227–1232; email *walter.sippel@faa.gov.*

For legal questions concerning this action, contact Doug Anderson, Office of Regional Counsel, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2166; facsimile (425) 227–1007; email *douglas.anderson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On November 15, 2010, the FAA published a final rule entitled, ''Aging Airplane Program: Widespread Fatigue Damage,'' (75 FR 69746). In that final rule the FAA revised the regulations pertaining to certification and operation of transport category airplanes to prevent widespread fatigue damage in those airplanes. For certain existing airplanes, the rule required design approval holders to evaluate their airplanes to establish an LOV. For future airplanes, the rule required all applicants for type certificates, after the effective date of the rule, to establish an LOV. Design approval holders and applicants must demonstrate that the airplane will be free from widespread fatigue damage up to the LOV. The rule requires that operators of any affected airplane incorporate the LOV into the maintenance program for that airplane. After issuing the final rule, the FAA determined minor technical changes are needed to correct dates for establishing LOVs for Airbus A310 and A300–600 series airplanes for compliance with § 26.21. Based on that change, the FAA determined minor technical changes are also needed to correct dates for operators to comply with § 121.1115 or § 129.115. We inadvertently included those airplanes in the group of airplane models for which the following compliance times apply:

- 18 months after January 14, 2011, for design approval holders (DAHs).
- 30 months after January 14, 2011, for operators.

Change to Table 1 of § 26.21

The change to Table 1 of § 26.21 corrects the compliance date for the Airbus A310 and A300–600 series airplanes from 18 to 48 months after January 14, 2011. This change is relieving and corrects an inconsistency with the intent of the rule and does not impact the ability of Airbus to comply with § 26.21. As stated in the preamble of the rule entitled, ''Aging Airplane Program: Widespread Fatigue Damage,'' the FAA intended to phase in compliance based on the airplane's certification basis relative to § 25.571 (Group I: pre-Amendment 25–45, Group II: Amendment 25–45 up to but not including 25–96, and Group III: Amendment 25–96 and later). We included the A310 and A300–600 series airplanes in Group I, with a compliance time of 18 months, but they should have been included in Group II, with a compliance time of 48 months. The type certificate data sheet, A35EU, revision 25, dated May 28 2010, identifies the amendment level of the A310 as Amendment 25–45. The A300–600 is listed with § 25.571 at various amendment levels, including some versions with pre-Amendment 25–45. However, through post-certification assessments, Airbus has shown that all versions of the A300–600 meet the requirements of Amendment 25–45, and the FAA has recognized this in other rulemaking actions (see Damage Tolerance Data for Repairs and Alterations, 72 FR 70486).

Change to Table 1 of § 121.1115 and § 129.115

The change to Table 1 of §§ 121.1115 and 129.115 corrects the compliance date for operators of Airbus A310 and A300–600 series airplanes from 30 to 60 months after January 14, 2011. This change corresponds to the change to Table 1 of § 26.21, is relieving, corrects an inconsistency with the intent of the rule, and does not impact the ability of operators to comply with § 121.1115 or § 129.115. As stated in the preamble of the rule entitled, ''Aging Airplane Program: Widespread Fatigue Damage,'' the FAA intended to phase in compliance based on the airplane's certification basis relative to § 25.571. We included the A310 and A300–600 series airplanes in Group I, with a compliance time of 30 months, but they should have been incorporated in Group II, with a compliance date of 60 months.

Technical Amendment

This technical amendment corrects the compliance dates of § 26.21, § 121.1115, and § 129.115 for Airbus A310 and A300–600 series airplanes.

Because the changes in this technical amendment are relieving to affected design approval holders and operators of those airplanes, and results in no substantive change, we find good cause exists under 5 U.S.C. 553(d)(3) to make the amendment effective in less than 30 days.

List of Subjects

14 CFR Part 26

Aircraft, Aviation safety, Continued airworthiness.

14 CFR Parts 121 and 129

Air carriers, Aircraft, Aviation safety, Continued airworthiness, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations, parts 26, 121, and 129, as follows:

PART 26—CONTINUED AIRWORTHINESS AND SAFETY IMPROVEMENTS FOR TRANSPORT CATEGORY AIRPLANES

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

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702 and 44704.

■ 2. Amend § 26.21 by revising Table 1—Compliance Dates for Affected Airplanes, to read as follows:

§ 26.21 Limit of validity.

* * * * *

TABLE 1—COMPLIANCE DATES FOR AFFECTED AIRPLANES

Airplane model (all existing [1] models)	Compliance date—(months after January 14, 2011)
Airbus:	
A300 Series	18
A310 Series, A300–600 Series	48
A318 Series	48
A319 Series	48
A320 Series	48
A321 Series	48
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MD–90	48
DC–10	18
MD–10	48
MD–11, –11F	48
All Other Airplane Models Listed on a Type Certificate as of January 14, 2011	60

[1] Type certificated as of January 14, 2011.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 3. 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, 44901, 44903–44904, 44912, 45101–45105, 46105, 46301.

■ 4. Amend § 121.1115 by revising Table 1—Airplanes Subject to § 26.21, to read as follows:

§ 121.1115 Limit of validity.

* * * * *

TABLE 1—AIRPLANES SUBJECT TO § 26.21

Airplane model	Compliance date—months after January 14, 2011	Default LOV [flight cycles (FC) or flight hours (FH)]
Airbus—Existing [1] Models Only:		

TABLE 1—AIRPLANES SUBJECT TO § 26.21—Continued

Airplane model	Compliance date—months after January 14, 2011	Default LOV [flight cycles (FC) or flight hours (FH)]
A300 B2–1A, B2–1C, B2K–3C, B2–203	30	48,000 FC
A300 B4–2C, B4–103	30	40,000 FC
A300 B4–203	30	34,000 FC
A300–600 Series	60	30,000 FC/67,500 FH
A310–200 Series	60	40,000 FC/60,000 FH
A310–300 Series	60	35,000 FC/60,000 FH
A318 Series	60	48,000 FC/60,000 FH
A319 Series	60	48,000 FC/60,000 FH
A320–100 Series	60	48,000 FC/48,000 FH
A320–200 Series	60	48,000 FC/60,000 FH
A321 Series	60	48,000 FC/60,000 FH
A330–200, –300 Series (except WV050 family) (non enhanced).	60	40,000 FC/60,000 FH
A330–200, –300 Series WV050 family (enhanced)	60	33,000 FC/100,000 FH
A330–200 Freighter Series	60	See NOTE.
A340–200, –300 Series (except WV 027 and WV050 family) (non enhanced).	60	20,000 FC/80,000 FH
A340–200, –300 Series WV 027 (non enhanced)	60	30,000 FC/60,000 FH
A340–300 Series WV050 family (enhanced)	60	20,000 FC/100,000 FH
A340–500, –600 Series	60	16,600 FC/100,000 FH
A380–800 Series	72	See NOTE.
Boeing—Existing [1] Models Only:		
717	60	60,000 FC/60,000 FH
727 (all series)	30	60,000 FC
737 (Classics): 737–100, –200, –200C, –300, –400, –500.	30	75,000 FC
737 (NG): 737–600, –700, –700C, –800, –900, –900ER.	60	75,000 FC
747 (Classics): 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, 747SP, 747SR.		
747–400: 747–400, –400D, –400F	30	20,000 FC
757	60	20,000 FC
767	60	20,000 FC
777–200, –300	60	50,000 FC
777–200LR, 777–300ER	60	50,000 FC
777F	60	40,000 FC
	72	40,000 FC
	72	11,000 FC
Bombardier—Existing [1] Models Only:		
CL–600: 2D15 (Regional Jet Series 705), 2D24 (Regional Jet Series 900).	72	60,000 FC
Embraer—Existing [1] Models Only:		
ERJ 170	72	See NOTE.
ERJ 190	72	See NOTE.
Fokker—Existing [1] Models Only:		
F.28 Mark 0070, Mark 0100	30	90,000 FC
Lockheed—Existing [1] Models Only:		
L–1011	30	36,600 FC
188	30	20,000 FC
382 (all series)	30	20,000 FC/50,000 FH
McDonnell Douglas—Existing [1] Models Only:		
DC–8, –8F	30	50,000 FC/50,000 FH
DC–9 (except for MD–80 models)	30	100,000 FC/100,000 FH
MD–80 (DC–9–81, –82, –83, –87, MD–88)	30	50,000 FC/50,000 FH
MD–90	60	60,000 FC/90,000 FH
DC–10–10, –15	30	42,000 FC/60,000 FH
DC–10–30, –40, –10F, –30F, –40F	30	30,000 FC/60,000 FH
MD–10–10F	60	42,000 FC/60,000 FH
MD–10–30F	60	30,000 FC/60,000 FH
MD–11, MD–11F	60	20,000 FC/60,000 FH
Maximum Takeoff Gross Weight Changes:		
All airplanes whose maximum takeoff gross weight has been decreased to 75,000 pounds or below after January 14, 2011, or increased to greater than 75,000 pounds at any time by an amended type certificate or supplemental type certificate.	30, or within 12 months after the LOV is approved, or before operating the airplane, whichever occurs latest.	Not applicable.
All Other Airplane Models (TCs and amended TCs) not Listed in Table 2.	72, or within 12 months after the LOV is approved, or before operating the airplane, whichever occurs latest.	Not applicable.

[1] Type certificated as of January 14, 2011.

Note: Airplane operation limitation is stated in the Airworthiness Limitation section.

* * * * *

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

■ 5. The authority citation for part 129 continues to read:

Authority: 49 U.S.C. 1372, 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901–44904, 44906, 44912, 46105, Pub. L. 107–71 sec. 104.

■ 6. Amend § 129.115 by revising Table 1—Airplanes Subject to § 26.21, to read as follows:

§ 129.115 Limit of validity.

* * * * *

TABLE 1—AIRPLANES SUBJECT TO § 26.21

Airplane model	Compliance date—months after January 14, 2011	Default LOV [flight cycles (FC) or flight hours (FH)]
Airbus—Existing [1] Models Only:		
A300 B2–1A, B2–1C, B2K–3C, B2–203	30	48,000 FC
A300 B4–2C, B4–103	30	40,000 FC
A300 B4–203	30	34,000 FC
A300–600 Series	60	30,000 FC/67,500 FH
A310–200 Series	60	40,000 FC/60,000 FH
A310–300 Series	60	35,000 FC/60,000 FH
A318 Series	60	48,000 FC/60,000 FH
A319 Series	60	48,000 FC/60,000 FH
A320–100 Series	60	48,000 FC/48,000 FH
A320–200 Series	60	48,000 FC/60,000 FH
A321 Series	60	48,000 FC/60,000 FH
A330–200, –300 Series (except WV050 family) (non enhanced).	60	40,000 FC/60,000 FH
A330–200, –300 Series WV050 family (enhanced)	60	33,000 FC/100,000 FH
A330–200 Freighter Series	60	See NOTE.
A340–200, –300 Series (except WV 027 and WV050 family) (non enhanced).	60	20,000 FC/80,000 FH
A340–200, –300 Series WV 027 (non enhanced)	60	30,000 FC/60,000 FH
A340–300 Series WV050 family (enhanced)	60	20,000 FC/100,000 FH
A340–500, –600 Series	60	16,600 FC/100,000 FH
A380–800 Series	72	See NOTE.
Boeing—Existing [1] Models Only:		
717	60	60,000 FC/60,000 FH
727 (all series)	30	60,000 FC
737 (Classics): 737–100, –200, –200C, –300, –400, –500 737 (NG): 737–600, –700, –700C, –800, –900, –900ER.	30	75,000 FC
	60	75,000 FC
747 (Classics): 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, 747SP, 747SR		
747–400: 747–400, –400D, –400F	30	20,000 FC
757	60	20,000 FC
767		
777–200, –300	60	50,000 FC
777–200LR, 777–300ER	60	50,000 FC
777F	60	40,000 FC
	72	40,000 FC
	72	11,000 FC
Bombardier—Existing [1] Models Only:.		
CL–600: 2D15 (Regional Jet Series 705), 2D24 (Regional Jet Series 900).	72	60,000 FC
Embraer—Existing [1] Models Only:		
ERJ 170	72	See NOTE.
ERJ 190	72	See NOTE.
Fokker—Existing [1] Models Only:		
F.28 Mark 0070, Mark 0100	30	90,000 FC
Lockheed—Existing [1] Models Only:		
L–1011	30	36,000 FC
188	30	26,600 FC
382 (all series)	30	20,000 FC/50,000 FH
McDonnell Douglas—Existing [1] Models Only:		
DC–8, –8F	30	50,000 FC/50,000 FH
DC–9 (except for MD–80 models)	30	100,000 FC/100,000 FH
MD–80 (DC–9–81, –82, –83, –87, MD–88)	30	50,000 FC/50,000 FH
MD–90	60	60,000 FC/90,000 FH
DC–10–10, –15	30	42,000 FC/60,000 FH
DC–10–30, –40, –10F, –30F, –40F	30	30,000 FC/60,000 FH
MD–10–10F	60	42,000 FC/60,000 FH

TABLE 1—AIRPLANES SUBJECT TO § 26.21—Continued

Airplane model	Compliance date—months after January 14, 2011	Default LOV [flight cycles (FC) or flight hours (FH)]
MD–10–30F	60	30,000 FC/60,000 FH
MD–11, MD–11F	60	20,000 FC/60,000 FH
Maximum Takeoff Gross Weight Changes:		
All airplanes whose maximum takeoff gross weight has been decreased to 75,000 pounds or below after January 14, 2011, or increased to greater than 75,000 pounds at any time by an amended type certificate or supplemental type certificate.	30, or within 12 months after the LOV is approved, or before operating the airplane, whichever occurs latest.	Not applicable.
All Other Airplane Models (TCs and amended TCs) Not Listed in Table 2.	72, or within 12 months after the LOV is approved, or before operating the airplane, whichever occurs latest.	Not applicable.

[1] Type certificated as of January 14, 2011.
Note: Airplane operation limitation is stated in the Airworthiness Limitation section.

* * * * *

Issued in Washington, DC, on May 18, 2012.

Lirio Liu,

Acting Director, Office of Rulemaking.

[FR Doc. 2012–12658 Filed 5–23–12; 8:45 a.m.]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1341; Directorate Identifier 2011–NE–41–AD; Amendment 39–17062; AD 2012–10–13]

RIN 2120–AA64

Airworthiness Directives; Continental Motors, Inc. (CMI) Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are superseding an existing airworthiness directive (AD) for certain Continental Motors, Inc. (CMI) models TSIO–520, TSIO–550–K, TSIOF–550K, and IO–550–N series reciprocating engines with new or rebuilt CMI starter adapters installed between January 1, 2011 and November 20, 2011. That AD currently requires replacing affected CMI starter adapters with starter adapters eligible for installation. This AD requires the same actions, but to an expanded population of reciprocating engines. This AD was prompted by two additional reports received of fractures in starter adapter gear shafts in certain additional part number (P/N) CMI starter adapters since we issued the existing AD. We are issuing this AD to prevent starter adapter gear shaft failure which could cause oil scavenge pump failure and engine in-flight shutdown.

DATES: This AD is effective June 8, 2012.

We must receive any comments on this AD by July 9, 2012.

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

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

For service information identified in this AD, contact Continental Motors, Inc., PO Box 90, Mobile, AL 36601; phone: 251–438–3411, or go to: *http://tcmlink.com/servicebulletins.cfm.*

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 street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Anthony Holton, Aerospace Engineer, Atlanta Certification Office, FAA, Small Airplane Directorate, 1701 Columbia Avenue, Atlanta, GA 30337; phone: 404–474–5567; fax: 404–474–5606; email: *anthony.holton@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On December 5, 2011, we issued AD 2011–25–51, Amendment 39–16891 (76 FR 77382, December 13, 2011). That AD applied to certain CMI models TSIO–520, TSIO–550–K, TSIOF–550K, and IO–550–N series reciprocating engines manufactured between January 1, 2011 and November 20, 2011 with certain starter adapters installed. That AD also applied to those same engine models where a replacement new or rebuilt starter adapter from CMI was installed between January 1, 2011 and November 20, 2011. That AD requires replacing affected CMI starter adapters with starter adapters eligible for installation. That AD resulted from five reports of fractures in starter adapter gear shafts in certain P/N CMI starter adapters. We issued that AD to prevent starter adapter gear shaft failure which could cause oil scavenge pump failure and engine in-flight shutdown.

Actions Since AD 2011–25–51 Was Issued

Since we issued AD 2011–25–51 (76 FR 77382, December 13, 2011), we received 2 additional reports of fractures in starter adapter shaft gears in CMI starter adapters not listed in that AD. This AD supersedure expands the population of affected starter adapters by adding five P/Ns, P/Ns 642085A18; 642085A22; R–642085A18; R–642085A19; and R–642085A22, to the applicability. This AD supersedure also expands the applicability from new or rebuilt CMI starter adapters installed between January 1, 2011 and November 20, 2011, to, new or rebuilt CMI starter adapters installed before November 20, 2011.

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 replacing affected CMI starter adapters on affected engines with starter adapters eligible for installation.

FAA's Justification and 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 of the short compliance time required to remove the affected parts from service. 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 we did not provide you with notice and an opportunity to provide your comments before it becomes effective. 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–2011–1341 and directorate identifier FAA–2011–NE–41–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 will affect 225 engines installed on airplanes of U.S. registry. We also estimate that it will take about 4 work-hours per engine to perform the actions required by this AD, and that the average labor rate is $85 per work-hour. Required parts will cost about $500 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $189,000.

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 part 39 of the Federal Aviation Regulations (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) 2011–25–51, Amendment 39–16891, (76 FR 77382, December 13, 2011) and adding the following new AD:

2012–10–13 Continental Motors, Inc. (formerly Teledyne Continental Motors, formerly Continental): Amendment 39–17062; Docket No. FAA–2011–1341; Directorate Identifier 2011–NE–41–AD.

(a) Effective Date

This AD is effective June 8, 2012.

(b) Affected ADs

This AD supersedes AD 2011–25–51, Amendment 39–16891 (76 FR 77382, December 13, 2011).

(c) Applicability

This AD applies to Continental Motors, Inc. (CMI) TSIO–520–B, BB, D, DB, E, EB, J, JB, K, KB, N, NB, UB, VB; TSIO–550–K; TSIOF–550–K; IO–550–N (Turbo-normalized only; STC SE10589SC); with a starter adapter part number (P/N) 642085A17; 642085A18; 642085A19; 642085A20; 642085A22; 642085–1A1, R–642085A17; R–642085A18; R–642085A19; or R–642085A22 installed, where the engine was manufactured before November 20, 2011, or, where a new or rebuilt starter adapter was installed before November 20, 2011.

(d) Unsafe Condition

This AD was prompted by two additional reports received of fractures in starter adapter gear shafts in certain additional P/N CMI starter adapters since we issued AD 2011–25–51 (76 FR 77382, December 13, 2011). We are issuing this AD to prevent starter adapter gear shaft failure which could cause oil scavenge pump failure and engine in-flight shutdown.

(e) Compliance

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

(1) For starter adapters with less than 75 hours of total time-in-service (TIS) on the effective date of this AD, before further flight, replace the starter adapter with a starter adapter eligible for installation.

(2) For starter adapters with between 75 and 100 hours of total TIS, inclusive on the effective date of this AD, within the next 10 hours of engine operation, or before exceeding 100 hours TIS, whichever occurs first, replace the starter adapter with a starter adapter eligible for installation.

(3) For starter adapters with more than 100 hours of total TIS on the effective date of this AD, no further action is required.

(f) Definition

For the purpose of this AD, a starter adapter eligible for installation is:

(1) A starter adapter with one of the P/Ns listed in this AD that has a vibro-peened manufacturer code below the ink stamped P/N on the starter adapter, or

(2) A starter adapter with one of the P/Ns listed in this AD that has more than 100 hours total TIS.

(g) Alternative Methods of Compliance (AMOCs)

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

(h) Related Information

(1) For further information about this AD, contact: Anthony Holton, Aerospace Engineer, Atlanta Certification Office, FAA, Small Airplane Directorate, 1701 Columbia Avenue, Atlanta, GA 30337; phone: 404–474–5567; fax: 404–474–5606; email: *anthony.holton@faa.gov*.

(2) CMI Mandatory Service Bulletin No. MSB11–4B, dated April 4, 2012, pertains to this AD.

(3) For copies of the service information referenced in this AD, contact: Continental Motors, Inc., PO Box 90, Mobile, AL 36601; phone: 251–438–3411, or go to: *http://tcmlink.com/servicebulletins.cfm*. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on May 16, 2012.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–12612 Filed 5–23–12; 8:45 a.m.]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0438; Airspace Docket No. 11–AWP–20];

Amendment of Area Navigation (RNAV) Route Q–130; UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the description of RNAV route Q–130 by changing the name of the MRRNY waypoint to ROCCY. The FAA is taking this action following a pilot deviation incident wherein confusion resulted from the two similarly sounding waypoint names in the Q–130 description. In addition, the FAA is making minor editorial changes to the route description to standardize the format.

DATES: *Effective Dates:* 0901 UTC, July 26, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

Background

A recent pilot deviation incident occurred wherein a pilot confused the MRRNY and similar-sounding MIRME waypoints, along RNAV route Q–130, during radio communications with air traffic control. To eliminate future misunderstandings, the FAA is changing the name ''MRRNY'' to ''ROCCY,'' This is a name change only as the geographic position of the waypoint remains the same as currently published. In addition, the FAA is making minor editorial changes to the Q–130 description that spells out the names of navigation aids, and adds state names for each waypoint or fix that forms the route. These changes standardize the format of route descriptions and do not affect the alignment of Q–130.

Because this action changes a waypoint name for safety reasons to avoid confusion in radio communications, notice and public procedures under 5 U.S.C. 553(b) are impractical and contrary to the public interest.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by changing the name of the ''MRRNY'' waypoint in the description of RNAV route Q–130 to ''ROCCY.'' Additionally, this action makes minor editorial changes to the route description to standardize the format. These changes are editorial only and do not affect the existing alignment of Q–130.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it eliminates confusion on the part of pilots flying in the vicinity of Q–130.

United States area navigation routes are published in paragraph 2006 of FAA Order 7400.9V, effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The RNAV route listed in this document will be published subsequently in the Order.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 2006 United States area navigation routes.

* * * * *

Q–130 Linden, CA to Panhandle, TX [Amended]

Linden, CA (LIN)
VORTAC (Lat. 38°04′29″ N., long. 121°00′14″ W.)
JSICA, NV
WP (Lat. 38°31′14″ N., long. 117°17′13″ W.)
REANA, NV
WP (Lat. 38°24′00″ N., long. 114°20′00″ W.)
ROCCY, UT
WP (Lat. 37°49′42″ N., long. 111°59′60″ W.)
Rattlesnake, NM (RSK)
VORTAC (Lat. 36°44′54″ N., long. 108°05′56″ W.)
DIXAN, NM
FIX (Lat. 36°16′51″ N., long. 105°57′20″ W.)
MIRME, NM
WP (Lat. 35°47′01″ N., long. 103°50′32″ W.)
Panhandle, TX (PNH)
VORTAC (Lat. 35°14′06″ N., long. 101°41′56″ W.)

Issued in Washington, DC, on May 16, 2012.

Ellen Crum,

Acting Manager, Airspace, Regulations & ATC Procedures Group.

[FR Doc. 2012–12538 Filed 5–23–12; 8:45 a.m.]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2012–0461; Airspace Docket No. 12–AWP–1]

RIN 2120–AA66

Amendment of Restricted Area R–2502E; Fort Irwin, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the designated controlling agency for restricted area R–2502E, Fort Irwin, CA, from the Federal Aviation Administration, High-Desert Terminal Radar Approach Control (TRACON), Edwards, CA, to FAA, Los Angeles Air Route Traffic Control Center (ARTCC). This change will improve the efficiency of air traffic operations in the vicinity of Fort Irwin, CA.

DATES: Effective date 0901 UTC, July 26, 2012.

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

SUPPLEMENTARY INFORMATION:

Background

For operational considerations and improved efficiency of the National Airspace System, the FAA is changing the assigned controlling agency for restricted area R–2502E, Fort Irwin, CA, to ''FAA, Los Angeles ARTCC.''

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 to update the controlling agency for restricted area R–2502E, Fort Irwin, CA. The FAA is changing controlling agency responsibility for R–2502E from ''FAA, High-Desert TRACON, Edwards, CA,'' to ''FAA, Los Angeles ARTCC.''

This is an administrative change and does not affect the boundaries, designated altitudes, or activities conducted within the restricted area; therefore, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

Section 73.25 of 14 CFR part 73 was republished in FAA Order 7400.8U, effective February 16, 2012.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as amends the description of restricted area R–2502E at Fort Irwin, CA.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, Environmental Impacts: Policies and Procedures, paragraph 311d. This airspace action is an administrative change to update the assigned controlling agency for R–2502E. It does not alter the altitudes, time of designation or use of the restricted airspace at Fort Irwin, CA, therefore, it is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exists that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

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

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

§ 73.25 [Amended]

■ 2. § 73.25 is amended as follows:

* * * * *

R–2502E Fort Irwin, CA [Amended]

By removing the current Controlling agency and substituting the following:

Controlling agency. FAA, Los Angeles ARTCC.

* * * * *

Issued in Washington, DC, on May 16, 2012.

Ellen Crum,

Acting Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2012–12541 Filed 5–23–12; 8:45 a.m.]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2011–0628]

Clarification of Prior Interpretations of the Seat Belt and Seating Requirements for General Aviation Flights

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Clarification of prior interpretations.

SUMMARY: This action clarifies prior interpretations of FAA's seat belt and seating requirements. These prior interpretations state that the shared use of a single restraint may be permissible. This clarification states that the use of a seat belt and/or seat by more than one occupant is permitted only if the seat usage conforms to the limitations contained in the approved portion of the Airplane Flight Manual (AFM). In addition, before multiple occupants use the same seat and/or seat belt, if the pertinent information is available, the pilot in command (PIC) must also check whether: The seat belt is approved and rated for such use; and the structural strength requirements for the seat are not exceeded. This clarification also emphasizes that, because it is safer for each individual person to have his or her own seat and seat belt, whenever possible, each person onboard an aircraft should voluntarily be seated in a separate seat and be restrained by a separate seat belt.

DATES: May 24, 2012.

FOR FURTHER INFORMATION CONTACT: Alex Zektser, Attorney, Regulations Division, Office of Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–3073; email: *Alex.Zektser@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On March 22, 2009, a Pilatus PC–12/45 descended and impacted the ground near the approach end of a runway at Bert Mooney Airport in Butte, Montana. After investigating this incident, the National Transportation Safety Board (NTSB) determined the following.

At the time of the impact, the Pilatus PC–12/45 airplane was operating as a personal flight under the provisions of 14 CFR part 91. The pilot and the 13 airplane passengers were killed, and the airplane was destroyed by impact forces and the postcrash fire. Among the 13 passengers were six adults and seven children. Because the flight was a single-pilot operation, eight seats in the cabin and one seat in the cockpit were available to the 13 passengers. Thus, the number of passengers exceeded the number of available seats. The NTSB was unable to determine the original seating position for most of the occupants, but the bodies of four children, ages 3 to 9 years, were found farthest from the impact site, indicating that these children were likely thrown from the airplane because they were unrestrained or improperly restrained. The NTSB noted that if the accident had been less severe and the impact had been survivable, any unrestrained occupant or occupants sharing a single restraint system would have been at a much greater risk of injury or death.

NTSB Request and Proposed Clarification

As a result of the March 22, 2009 incident described above, the NTSB has requested that the FAA withdraw its prior interpretations of 14 CFR 91.107(a)(3), which permit the shared use of a single restraint system. In response to the NTSB's request, the FAA proposed to clarify that § 91.107(a)(3) permits multiple occupants to use one seat belt and/or seat, but that such use is only appropriate if: (1) The belt is approved and rated for this type of use; (2) the structural strength requirements for the seat are not exceeded; and (3) the seat usage conforms with the limitations contained in the approved portion of the AFM (14 CFR 23.1581(j)).

The FAA received six comments in response to its proposed clarification. After considering the information provided in the comments, the FAA clarifies its prior interpretations of the seat belt and seating requirements of 14 CFR 91.107(a)(3) as follows.

Discussion of the Final Clarification

For part 91 operations, § 91.107(a)(3) requires that ''each person on board a U.S. registered civil aircraft * * * must occupy an approved seat or berth with a safety belt and, if installed, shoulder harness, properly secured about him or her during movement on the surface, takeoff, and landing.'' For commercial operations under part 121, § 121.311 requires that each person ''occupy an approved seat or berth with a separate safety belt properly secured about him.'' Under both parts, children under the age of two may be held by an adult who is occupying an approved seat or berth and no restraining device for the child is used.

When § 121.311 and § 91.107 (previously § 91.14) were first promulgated in 1971, the FAA clarified that the separate use provision for safety belts under part 121 was not intended to apply to part 91 operations. Rather, part 91 ''requires only that each person on board occupy a seat or berth with a safety belt properly secured about him.'' 36 **Federal Register** 12511 (July 1, 1971). The FAA has previously interpreted this provision as not requiring separate use of safety belts. *See* Legal Interpretation 1990–14. At the time, this allowance was permissible because seat belts were generally rated in terms of strength and some were rated for more than one occupant to accommodate side-by-side seating arrangements (i.e., bench seats) in certain aircraft that are commonly used in operations conducted under part 91. Thus, under the previous interpretations, the use of a seat belt and seat by more than one occupant may have been appropriate only if: (1) The belt was approved and rated for such use; (2) the structural strength requirements for the seat were not exceeded; and (3) the seat usage conformed with the limitations contained in the approved portion of the Airplane Flight Manual (14 CFR 23.1581(j)). *See* 36 FR 12511; *see also* 14 CFR 23.562, 23.785; Legal Interpretation 1990–14; Legal Interpretation to Mr. C.J. Leonard from Hays Hettinger, Associate Counsel (July 26, 1966).

In its comment, the NTSB stated that the shared use of a single seat belt by multiple occupants is never appropriate because this type of use drastically reduces the safety of the occupants. The NTSB asked the FAA to interpret § 91.107(a)(3) in a way that discourages the ''unsafe practice of allowing multiple occupants to share a single seat and/or restraint system that [is] not certified for more than one occupant.''

Because this is a clarification of prior interpretations and not a rulemaking, the FAA is limited in what it can do in this matter. An interpretation of a regulation cannot ignore the ''indications of the agency's intent at the time of the regulation's promulgation.'' *Air Transport Ass'n of America, Inc.* v. *F.A.A.,* 291 F.3d 49, 53 (DC Cir. 2002). As discussed above, when the FAA first promulgated the section that ultimately became § 91.107(a)(3), the agency stated that, in contrast to part 121, part 91 did not require that each person have a separate seat and/or seat belt. *See* 36 FR 12511. Because the FAA cannot rewrite § 91.107(a)(3) through interpretation, the FAA is bound in this matter by the agency's stated intent at the time of this section's promulgation—that a separate

seat and/or seat belt for each person is not required in all circumstances for part 91 operations.

In addition, the FAA notes that changing § 91.107(a)(3) may have far-reaching consequences that would best be addressed through a rulemaking. For example, in its comment, the NTSB acknowledged that some older airplanes currently have bench-style seating that can accommodate multiple passengers with one restraint system. The FAA notes that airplanes with these bench-style seats make up a significant portion of the part 91 community. In addition, aircraft with these types of seating have a significant diversity in their specific seating restraint arrangements—some aircraft with bench seats have a seat belt equipped for each individual passenger while other aircraft with bench seats have a single shared seat belt for use by everyone in the bench seat. Because a significant portion of the part 91 community currently uses some manner of a shared seat/seat belt, the FAA would need to consider, as part of a rulemaking, the effects that changing § 91.107(a)(3) would have on those members of the part 91 community.

Nevertheless, even though § 91.107(a)(3), as previously interpreted by the agency, may allow for shared use of a single restraint in certain situations, the FAA agrees with NTSB that having each passenger use a separate seat and a separate seat belt can be significantly safer than having passengers share a seat and/or seat belt. Accordingly, the FAA strongly encourages PICs in part 91 operations to ensure, whenever possible, that each passenger is seated in a separate seat and restrained by a separate restraint system. With regard to children, the FAA also strongly encourages children to be restrained in a separate seat by an appropriate child restraint system during takeoff, landing, and turbulence.

In its comments, the NTSB also expressed a concern that this clarification could be interpreted to permit multiple occupants to share a single shoulder harness. In response to NTSB's concern, the FAA emphasizes that the proposed clarification was drafted to address the shared use of seats and/or seat belts—not shoulder harnesses. Because the proposed clarification did not address shoulder harnesses, this clarification is limited solely to the shared use of seats and/or seat belts in part 91 operations.

In their comments, the NTSB and an individual commenter also asserted that the structural strength requirements for a seat and the approval and rating for a seat belt are not always available to a general aviation pilot because this information is typically not included in the AFM. The individual commenter added that many older aircraft do not have an AFM, but instead have an owner's manual that contains even less information.

In response to these comments, the FAA notes that, even though the pertinent information is sometimes not contained in the AFM, information about seat usage limitations and seat belt approval and rating can, in many cases, be obtained from the equipment manufacturer. However, the FAA agrees with the commenters that this information cannot always be obtained from the equipment manufacturer. Accordingly, before multiple occupants are permitted to use the same seat and/or seat belt, if the pertinent information is available, the PIC should check whether: (1) The seat belt is approved and rated for such use; and (2) the structural strength requirements for the seat are not exceeded.

In addition, before seating multiple occupants in the same seat and/or seat belt, PICs should always check to ensure that the seat usage conforms to the limitations contained in the approved portion of the AFM or the owner's manual. Owner's manuals for older aircraft typically show the permissible seating arrangements that are to be used for the aircraft, and the number of people using a seat and/or seat belt should not exceed the number of people shown in the owner's manual seating arrangement.

Issued in Washington, DC, on May 18, 2012.

Rebecca B. MacPherson,

Assistant Chief Counsel for Regulations, AGC–200.

[FR Doc. 2012–12554 Filed 5–23–12; 8:45 a.m.]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1450

Virginia Graeme Baker Pool and Spa Safety Act; Interpretation of Unblockable Drain

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule; revocation; extension of compliance date.

SUMMARY: On October 11, 2011, the Consumer Product Safety Commission (''Commission'' or ''CPSC'') announced that it was revoking its interpretation of the term ''unblockable drain,'' as used in the Virginia Graeme Baker Pool and Spa Safety Act, 15 U.S.C. 8001 et seq. (''VGBA''). The Commission set a compliance date of May 28, 2012, for those who installed VGBA-compliant drain covers on or before October 11, 2011, in reliance on the Commission's initial interpretation. The Commission sought written comments regarding the ability of those who had installed VGBA-compliant unblockable drain covers on or before October 11, 2011, in reliance on the Commission's initial interpretation, to come into compliance with the revocation by May 28, 2012. The Commission is extending the compliance date to May 23, 2013, for those who have installed VGBA-compliant unblockable drain covers on or before October 11, 2011, in reliance on the Commission's original interpretive rule.[1]

DATES: This document does not alter the current requirement that public pools and spas be in compliance with the VGBA, which became effective on December 19, 2008. The compliance date for those who installed VGBA-compliant unblockable drain covers on or before October 11, 2011, in reliance on the Commission's April 27, 2010 interpretation of unblockable drains is extended to May 23, 2013.

FOR FURTHER INFORMATION CONTACT: Perry Sharpless, Directorate for Laboratory Sciences, Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone (301) 987–2288, or email: *psharpless@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

In September 2011, the U.S. Consumer Product Safety Commission voted to publish in the **Federal Register** a final rule regarding the revocation of the prior definition of ''unblockable drain.'' (76 FR 62605). The **Federal Register** notice invited comments regarding the ability of those who had installed VGBA-compliant unblockable drain covers, as described at 16 CFR 1450.2(b), to come into compliance with the revocation by May 28, 2012.

B. Comments

The majority of comments the Commission received were unrelated to the ability of the respondents to comply with the May 28, 2012 effective date. The comments that did address the May 28, 2012 compliance date fell into four basic categories. These comments were addressed in the staff's briefing memorandum, ''Summary of public

[1] Commissioners Adler, Nord, and Northup voted to extend the compliance date to May 23, 2013. Chairman Tenenbaum voted against extending the compliance date to May 23, 2013.

comments received regarding revocation of the definition of unblockable drain covers,'' dated March 30, 2012. Commission staff's summary and response to these comments follow:

1. Cost of compliance (142 comments) and dire financial circumstances (131 comments).

Comment: Members of the American Hotel & Lodging Association, the Illinois Department of Health, and others assert that the cost of retrofitting pools again would put an undue burden on them and cite to the impact of the poor economy on their operating revenues and the loss of revenue that will be incurred while the pools are closed for the modifications that will be required to bring them into compliance. Commenters in this category also mention the respondents' ''dire financial circumstances'' as a reason against the revocation of the Commission's April 27, 2010 definition of ''unblockable drain.''

Response: Commission staff agrees that there may be financial hardship, but only to those who relied upon the Commission's interpretive rule and installed an unblockable drain cover in lieu of installing a secondary system. Thus, Commission staff believes it seems reasonable to provide firms that relied on the Commission's prior interpretation the time to budget and plan for the expenditure needed to install a secondary system.

2. Apply prospectively (4 comments).

Comment: Commenters in this category cited the lack of injuries as a reason to apply the revocation only to facilities that are newly constructed or renovated in the future.

Response: Commission staff does not agree with prospective application to new construction or renovation. The law has required pools to be compliant with the VGBA for almost four years. Only firms that relied on the unblockable drain interpretive rule of April 27, 2010, and installed VGBA-compliant unblockable drain covers on or before October 11, 2011, are affected by the revocation decision. Thus, prospective application is overly broad, and applying it to firms that did not install VGBA-compliant unblockable drain covers on or before October 11, 2011, would not follow the statutorily mandated effective date, would create confusion, and would unduly complicate enforcement.

3. Comments Requesting Delay of Enforcement (2 comments).

Comment: Two commenters requested that the Commission delay the implementation of enforcement. One requested that the CPSC delay implementation of the enforcement of the change for one year because they had relied upon the original interpretation and installed unblockable drain covers and now would have to go back and ''re-do'' their work, which they said would penalize them unfairly for their compliance with the prior interpretation. The commenter also noted that the unblockable drain covers were far more expensive than typical smaller fittings, and asserted that they represented a major investment on the basis that, once the covers were installed, additional equipment would not be required. The other commenter requested that the Commission delay the implementation date to January 1, 2013, or prior to 2013 operation dates for seasonal pools and spas. The commenter also stated that regulated pools and spas that had already invested to comply with the requirements of the VGBA would be required to add secondary anti-entrapment systems or make other modifications at considerable expense, in addition to expenditures necessary to comply with state law and U.S. Department of Justice pool and spa accessibility requirements.

Response: Commission staff agrees that those who relied upon the Commission's interpretive rule and installed an unblockable drain cover in lieu of installing a secondary system will now face additional expenditures to bring their pools into compliance with the VGBA. Thus, Commission staff believes that it seems reasonable to provide those who installed VGBA-compliant unblockable drain covers on or before October 11, 2011, time to budget and plan for the expenditure needed to install a secondary system.

4. Compliance Date Is Acceptable (1 comment).

Comment: One comment was received in support of the May 28, 2012, compliance date. The commenter, the National Multi Housing Council/National Apartment Association (NMHC/NAA), expressed the belief that if the Commission offered additional guidance to the regulated community to assist with compliance, the majority of their members could comply by the deadline; but NMHC/NAA urged the CPSC to reevaluate the progress being made by pool owners and adjust the deadline, if necessary.

Response: CPSC staff has a concern about the number of requests that may be received for assistance with compliance and whether the pool operator is seeking a plan review and not just limited advice about how to handle the revocation decision. The only circumstance in which staff believes there could be any need for compliance assistance due to the revocation of the unblockable drain interpretive rule is with respect to pool operators who relied on the Commission's April 27, 2010 decision and installed VGBA-compliant unblockable drain covers on or before October 11, 2011. The guidance to those firms is that your unblockable drain cover is VGBA-compliant and does not need to be removed; but pool operators need to install a secondary anti-entrapment system to come into compliance, unless the pool uses a gravity drain system or the underlying drain is unblockable. Accordingly, if a pool operator installed an unblockable drain cover over a drain that is blockable, staff believes it is reasonable to allow them time to budget and plan for the expenditure required to install a secondary anti-entrapment system.

C. Commission Determination

Upon being presented with the staff briefing package, the Commission voted to extend the compliance date to May 23, 2013. Only firms that relied on the unblockable drain interpretive rule of April 27, 2010, and installed VGBA-compliant unblockable drain covers on or before October 11, 2011, will have until May 23, 2013, to install a secondary system, as necessary. Firms that did not rely on the unblockable drain interpretive rule of April 27, 2010, and did not install VGBA-compliant unblockable drain covers on or before October 11, 2011, should be compliant with the VGBA, and will not have additional time to come into compliance if they are not.

Dated: May 17, 2012.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2012–12335 Filed 5–23–12; 8:45 a.m.]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 600, 610, and 680

[Docket No. FDA–2011–N–0080]

RIN 0910–AG16

Amendments to Sterility Test Requirements for Biological Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule, correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a

final rule that appeared in the **Federal Register** of May 3, 2012. (77 FR 26162). The final rule provides manufacturers of biological products greater flexibility, as appropriate, and encourages use of the most appropriate and state-of-the-art test methods for assuring the safety of biological products. The rule was published with an inaccurate citation in the codified section of the rule. This notice corrects that error.

DATES: Effective June 4, 2012.

FOR FURTHER INFORMATION CONTACT: Paul E. Levine, Jr., Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: In FR Doc. 2012–10649, appearing on page 26162 in the **Federal Register** of Thursday, May 3, 2012, the following correction is made:

§ 680.3 [Corrected]

1. On page 26175, in the second column, in Part 680 Additional Standards for Miscellaneous Products, in § 680.3 Tests, paragraph (c), in line 4, ''§ 601.12'' is corrected to read ''§ 610.12''.

Dated: May 18, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–12594 Filed 5–23–12; 8:45 a.m.]

BILLING CODE 4160–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 36

[Docket ID: BIA–2012–0001]

RIN 1076–AF10

Heating, Cooling, and Lighting Standards for Bureau-Funded Dormitory Facilities

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Interim final rule with request for comments.

SUMMARY: As required by the No Child Left Behind Act of 2001, the Secretary of the Interior has developed regulations using negotiated rulemaking that address heating, cooling, and lighting standards for Bureau-funded dormitory facilities. These regulations also make a technical change to remove an obsolete reference.

DATES: This rule is effective on May 24, 2012. Please submit written comments by June 25, 2012. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of May 24, 2012.

ADDRESSES: You may submit comments by any of the following methods:

—*Federal rulemaking portal: http://www.regulations.gov.* The rule is listed under the agency name ''Bureau of Indian Affairs.'' The rule has been assigned Docket ID: BIA–2012–0001. If you would like to submit comments through the Federal e-Rulemaking Portal, go to *www.regulations.gov* and do the following. Go to the box entitled ''Enter Keyword or ID,'' type in ''BIA–2012–0001,'' and click the ''Search'' button. The next screen will display the Docket Search Results for the rulemaking. If you click on BIA–2012–0001, you can view this rule and submit a comment. You can also view any supporting material and any comments submitted by others.

—*Email: Regina.Gilbert@bia.gov.* Include the number 1076–AF10 in the subject line of the message.

—*Fax:* (505) 563–3811. Include the number 1076–AF10 in the subject line of the message.

—*Mail:* Regina Gilbert, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1001 Indian School Road NW., Suite 312, Albuquerque, NM 87104. Include the number 1076–AF10 in the subject line of the message.

—*Hand delivery:* Regina Gilbert, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1001 Indian School Road NW., Suite 312, Albuquerque, NM 87104. Include the number 1076–AF10 in the subject line of the message.

We cannot ensure that comments received after the close of the comment period (see **DATES**) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Regina Gilbert, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary—Indian Affairs, 1001 Indian School Road NW., Suite 312, Albuquerque, NM 87104; telephone (505) 563–3805; fax (505) 563–3811.

SUPPLEMENTARY INFORMATION:

I. Background
II. Description of Changes
III. Procedural Requirements
A. Regulatory Planning and Review (E.O. 12866)
B. Regulatory Flexibility Act
C. Small Business Regulatory Enforcement Fairness Act
D. Unfunded Mandates Reform Act
E. Takings (E.O. 12630)
F. Federalism (E.O. 13132)
G. Civil Justice Reform (E.O. 12988)
H. Consultation With Indian Tribes (E.O. 13175)
I. Paperwork Reduction Act
J. National Environmental Policy Act
K. Information Quality Act
L. Effects on the Energy Supply (E.O. 13211)
M. Clarity of This Regulation
N. Public Availability of Comments
O. Determination To Allow Shortened Public Comment Period

I. Background

The U.S. Government is responsible for educating American Indian children. This Federal duty is executed by the Bureau of Indian Affairs within the Department of the Interior. The Bureau funds 183 schools serving American Indian children. In part because of the low population densities across much of Indian country, a number of these schools include dormitory (''home-living'') facilities. Many of these schools and associated facilities are in poor physical condition.

The No Child Left Behind Act of 2001 (107 Pub. L. 110: 115 Stat. 1425) (Act) included provisions intended to improve the quality of education provided at Bureau-funded schools, and the physical condition of the school facilities. The Act directed the Secretary of the Interior to establish a negotiated rulemaking committee, in accordance with the provisions of the Negotiated Rulemaking Act, to ensure maximum contribution by the affected Indian tribes in responding to the mandates of the Act.

In 2003, the Secretary established a negotiated rulemaking committee, which held a series of meetings to address the mandates of the Act (the 2003 committee). On April 28, 2005, final rules developed by the 2003 committee were published in the **Federal Register**, addressing six components of the Act's mandates: defining adequate yearly progress; establishing geographic attendance areas for Bureau-funded schools; establishing a formula for the minimum amount necessary to fund Bureau-funded schools; establishing a system of uniform direct funding and support for Bureau-operated schools; providing guidelines to ensure the Constitutional and civil rights of Indian students; and establishing a method for administering grants to tribally controlled schools. 70 FR 22178.

Another section of the Act, codified at 25 U.S.C. 2002, directed that:

> the Secretary [of the Interior], in consultation with the Secretary of Education, Indian organizations and tribes, and Bureau-funded schools, shall revise the national standards for home-living (dormitory) situations to include such factors as heating, lighting, cooling, adult-child ratios, needs for counselors (including special needs related to off-reservation home-living (dormitory) situations), therapeutic programs, space, and privacy.

The 2003 committee promulgated rules addressing some of the components of section 2002, which were published on December 5, 2007, at 72 FR 68491. However, the 2003 committee had previously announced that:

> Standards relating to heating, cooling, and lighting of dormitories for home-living situations should be deferred for later consideration by the negotiated rulemaking committee charged with negotiating school construction under section 1125 of the Act. The Committee determined that it did not have the necessary expertise to define standards for these areas.

69 FR 41773, Monday, July 12, 2004.

The section of the Act referred to by the 2003 committee in the passage quoted above directs the Secretary to form a negotiated rulemaking committee specifically to collect information on the physical condition of the Bureau-funded school facilities, and submit reports to the Secretary and to certain Congressional committees regarding the allocation of funds for the maintenance, repair, and replacement of such facilities. 25 U.S.C. 2005. To comply with that mandate, the Secretary chartered the No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee on December 8, 2009 (the 2010 committee). Membership of the 2010 committee was published at 74 FR 65784 on December 11, 2009. The 2010 committee has held seven meetings at locations around Indian country through September 2011 to complete its work responding to the mandates of 25 U.S.C. 2005. It has drafted an interim final rule to complete the work responding to the mandates of 25 U.S.C. 2002.

Responsibility for the maintenance, repair, and replacement of Indian school facilities rests with the Office of Facilities Management and Construction (OFMC), under the Assistant Secretary—Indian Affairs. In designing such facilities, OFMC complies with the criteria set out in its ''School Facilities Design Handbook'' (handbook) dated March 30, 2007, which can be found at *www.bia.gov/WhoWeAre/AS-IA/ORM/Rulemaking/index.htm.* The handbook identifies the building and design codes with which construction at Bureau-funded schools must comply.

II. Description of Changes

The 2010 committee determined, by consensus, that the codes and standards identified in the handbook respecting heating, ventilation, air conditioning, and lighting are appropriate for home-living (dormitory) situations at Bureau-funded Indian education facilities. Therefore, the regulations being published today:

- Make the building and design codes identified in the handbook mandatory for Bureau-funded Indian education dormitories;
- Require the Bureau to give the public notice and an opportunity to comment on any proposal to change which standard building codes are incorporated in the handbook; and
- Make a technical change to remove reference to subpart H, which is no longer in existence, and replace with a reference to subpart G.

III. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866)

This interim final rule is not a significant rule and the Office of Management and Budget has not reviewed this rule under Executive Order 12866. This rule implements statutory requirements to revise the national standards for home-living (dormitory) situations to include such factors as heating, lighting, and cooling. Such standards shall be implemented in Bureau-operated schools, and shall serve as minimum standards for contract or grant schools.

This rule also makes a technical correction. On April 28, 2005, at 70 FR 21951, subpart H was deleted, and the home-living regulations were placed in subpart G. Therefore, a technical correction is needed to correct the reference of subpart H to subpart G.

1. This rule will not have an effect of $100 million or more on the economy or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule will have no effect on the economy because it merely establishes the minimum standards for national criteria for home-living situations.

2. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency because the Department is the only agency with Bureau-operated schools. This rule will affect tribes that operate schools that are contract or grant schools by following the minimum requirements for all new construction, major alterations and improvements, and minor remodeling of facilities.

3. This rule does not involve entitlements, grants, user fees, or loan programs or the rights or obligations of recipients. The revisions have no budgetary effects and do not affect the rights or obligations of any recipients.

4. These regulatory changes directly implement statutory provisions and do not raise novel legal or policy issues.

Overall, the impact of the rule is limited to Bureau-operated schools, and tribes that operate schools that are contract or grant schools. Accordingly, this rule is not a ''significant regulatory action'' from an economic standpoint, nor does it otherwise create any inconsistencies, materially alter any budgetary impacts, or raise novel legal or policy issues.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It does not change current funding requirements or regulate small entities.

C. Small Business Regulatory Enforcement Fairness Act

This interim final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. Because the standards in this rule are already being met in practice, it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This interim final rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the

Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

Under the criteria in Executive Order 12630, this interim final rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable ''taking.'' A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, this interim final rule has no 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. This rule implements a statutory requirement in Public Law 107–110, which requires national standards for home-living (dormitory) situations to include such factors as heating, lighting, and cooling. This Federal rule affects Bureau-operated schools and tribes that operate schools that are contract or grant schools by following the minimum requirements for all new construction, major alterations and improvements, and minor remodeling of facilities.

Because the rule does not affect the Federal government's relationship to the States or the balance of power and responsibilities among various levels of government, it will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Civil Justice Reform (E.O. 12988)

This interim final rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation; and is written in clear language and contains clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175)

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments,'' Executive Order 13175 (59 FR 22951, November 6, 2000), and 512 DM 2, we have evaluated the potential effects on federally recognized Indian tribes and Indian trust assets and have identified potential effects. The Department engaged tribal government representatives throughout the development of this interim final rule through the establishment of the negotiated rulemaking committee, as required by the No Child Left Behind Act of 2001.

I. Paperwork Reduction Act

This interim final rule does not require any information to be collected. Therefore, the Paperwork Reduction Act is not required.

J. National Environmental Policy Act

This interim final rule does not constitute a major Federal action significantly affecting the quality of the human environment.

K. Information Quality Act

In developing this interim final rule we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

L. Effects on the Energy Supply (E.O. 13211)

This interim final rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

M. Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the ''COMMENTS'' section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

N. Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

O. Required Determinations Under the Administrative Procedure Act

We are publishing this interim final rule with a request for comment without prior notice and comment, as allowed under 5 U.S.C. 553(b)(B).

Under section 553(b)(B), we find that prior notice and comment are unnecessary and would be contrary to the public interest. This rule codifies standards applicable to school facilities. The 2010 committee wrote this rule after consultation with tribes and to meet the needs of the Bureau-funded dormitory facilities. Delay in publishing this rule could lead to uncertainty about which standards are appropriate for heating, cooling, and lighting in residential facilities, which could lead to substandard living conditions, health problems, and other serious consequences. Delaying the rule by publication of a proposed rule would therefore be contrary to the public interest.

As allowed under 5 U.S.C. 553(d)(3), the effective date of this rule is the date of publication in the **Federal Register**. Good cause for an immediate effective date exists because immediate availability of the standards that the rule requires will eliminate uncertainty about facility requirements and will avoid problems that could result from substandard facilities, as discussed above.

We have requested comments on this interim final rule. We will review any comments received and, by a future publication in the **Federal Register**, address any comments received and either confirm the interim final rule with or without change or initiate a proposed rulemaking.

List of Subjects in 25 CFR Part 36

Educational facilities, Incorporation by reference, Indians—education, School construction.

For the reasons given in the preamble, the Department of the Interior amends 25 CFR part 36 as follows:

PART 36—MINIMUM ACADEMIC STANDARDS FOR THE BASIC EDUCATION OF INDIAN CHILDREN AND NATIONAL CRITERIA FOR DORMITORY SITUATIONS

■ 1. The authority for part 36 continues to read as follows:

Authority: Section 502, 25 U.S.C. 2001; section 5101, 25 U.S.C. 2001; Section 1101, 25 U.S.C. 2002; 5 U.S.C. 301; 25 U.S.C. 2 and 9; 25 U.S.C. 2901, Title I of Pub. L. 101–477.

■ 2. Revise § 36.2 to read as follows:

§ 36.2 Applicability.

The national criteria for dormitory situations established under subpart G serve as a minimum requirement and are mandatory for all Bureau-operated and Indian-controlled contract schools.

■ 2. Add § 36.104 to read as follows:

§ 36.104 What are the requirements for heating, ventilation, cooling and lighting at dormitories?

(a) All dormitories must be designed to meet or exceed the standards for heating, ventilation, cooling, and lighting set out in the building codes in the Bureau of Indian Affairs ''School Facilities Design Handbook,'' dated March 30, 2007, written and published by the Bureau of Indian Affairs Office of Facilities Management and Construction. The Director of the Federal Register has approved this incorporation by reference in accordance with 5 U.S.C. 552(a). To enforce any edition other than that specified in this section, the Bureau of Indian Affairs must publish notice of change in the **Federal Register** and the material must be available to the public

(1) You may obtain a copy of the Handbook at *http://www.bia.gov/cs/groups/xraca/documents/text/idc008030.pdf.* You can get answers to your questions from the Bureau of Indian Affairs Office of Facilities Management and Construction at: 1011 Indian School Road NW., Suite 335, Albuquerque, NM 87103; email: *OFECT@bia.gov;* Web site: *http://www.bia.gov/WhoWeAre/AS-IA/OFECR/index.htm.*

(2) You may inspect the Handbook at the Department of the Interior Library, Main Interior Building, 1849 C Street NW., Room 1151, Washington, DC 20240; telephone: (202) 208–3796. It is also available for inspection 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) If an existing dormitory does not comply with the standards in paragraph (a) of this section, we will classify the discrepancy as ''deferred capital maintenance'' for purposes of prioritizing correction of the discrepancy.

(c) The Bureau must publish in the **Federal Register** any proposal to change which building codes are included in the Bureau of Indian Affairs ''School Facilities Design Handbook'' or any successor document, and allow 120 days for public comment and consultation.

Dated: February 3, 2012.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. 2012–12678 Filed 5–23–12; 8:45 a.m.]

BILLING CODE 4310–W7–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2009–0996]

Hydroplane Races Within the Captain of the Port Puget Sound Area of Responsibility

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Special Local Regulation for Hydroplane Races within the Captain of the Port Puget Sound Area of Responsibility for the Tastin' n' Racin' hydroplane event in Lake Sammamish, WA on June 9th and 10th, 2012. This action is necessary to restrict vessel movement in the vicinity of the race courses thereby ensuring the safety of participants and spectators during these events. During the enforcement period non-participant vessels are prohibited from entering the designated race areas. Spectator craft entering, exiting or moving within the spectator area must operate at speeds which will create a minimum wake.

DATES: The regulations in 33 CFR 100.1308 will be enforced from 9 a.m. through 6 p.m. on June 9, 2012 and from 9 a.m. through 6 p.m. on June 10, 2012.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Ensign Anthony P. LaBoy, Sector Puget Sound Waterways Management Division, Coast Guard; telephone 206–217–6323, email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard is providing notice of enforcement of the Special Local Regulation for Hydroplane Races within the Captain of the Port Puget Sound Area of Responsibility 33 CFR 100.1308. The Lake Sammamish area, 33 CFR 100.1308(a)(3) will be enforced on June 9, 2012, from 9 a.m. to 6 p.m. and on June 10, 2012 from 9 a.m. to 6 p.m. These regulations can be found in the March 29, 2011 issue of the **Federal Register** (76 FR 17341).

Under the provisions of 33 CFR 100.1308, the regulated area shall be closed for the duration of the event to all vessel traffic not participating in the event and authorized by the event sponsor or Coast Guard Patrol Commander.

When this special local regulation is enforced, non-participant vessels are prohibited from entering the designated race areas unless authorized by the designated on-scene Patrol Commander. Spectator craft may remain in designated spectator areas but must follow the directions of the designated on-scene Patrol Commander. The event sponsor may also function as the designated on-scene Patrol Commander. Spectator craft entering, exiting or moving within the spectator area must operate at speeds which will create a minimum wake.

Emergency Signaling: A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the discretion of the designated on-scene Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the patrol vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

This notice is issued under authority of 33 CFR 100.1308 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners. If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, he may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: May 13, 2012.

S.J. Ferguson,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2012–12595 Filed 5–23–12; 8:45 a.m.]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket No. USCG–2012–0350]

Special Local Regulations and Safety Zones; Recurring Events in Northern New England

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulations.

SUMMARY: The Coast Guard will enforce the events outlined in Tables 1 and 2 taking place throughout the Sector Northern New England Captain of the Port Zone. This action is necessary to protect marine traffic and spectators from the hazards associated with powerboat races, regattas, boat parades, rowing and paddling boat races, swim events, and fireworks displays. During the enforcement period, no person or vessel may enter the Special Local Regulation area or Safety Zone without permission of the Captain of the Port.

DATES: The marine events listed in 33 CFR 100.120 and 33 CFR 165.171 will take place during the times and dates specified in Tables 1 and 2 in the **SUPPLEMENTARY INFORMATION** section. Events where the date is changing significantly from previously published dates are noted.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Lieutenant Junior Grade Terence Leahy, Waterways Management Division at Coast Guard Sector Northern New England, telephone 207–767–0398, email *Terence.O.Leahy@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Special Local Regulations and Safety Zones listed in 33 CFR 100.120 and 33 CFR 165.171. These regulations will be enforced for the duration of each event, on or about the dates indicated in TABLES 1 and 2.

For events where the date is different from the dates previously published for that event, new Temporary Rules may be issued to enforce limited access areas for the marine event. The Coast Guard may patrol each event area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM.'' Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the Captain of the Port, Sector Northern New England. For information about regulations and restrictions for waterway use during the effective periods of these events, please refer to 33 CFR 100.120 and 33 CFR 165.171.

TABLE 1 (33 CFR 100.120)

JUNE	
Bar Harbor Blessing of the Fleet	• Event Type: Regatta and Boat Parade. • Sponsor: Town of Bar Harbor, Maine. • Date: June 3, 2012; Rain date: June 10, 2012. • Time: 11:00 a.m. to 2:30 p.m. • Location: The regulated area includes all waters of Bar Harbor, Maine within the following points (NAD 83): 44°23′32″ N, 068°12′19″ W. 44°23′30″ N, 068°12′00″ W. 44°23′37″ N, 068°12′00″ W. 44°23′35″ N, 068°12′19″ W.
Charlie Begin Memorial Lobster Boat Races	• Event Type: Power Boat Race. • Sponsor: Boothbay Harbor Lobster Boat Race Committee. • Date: June 16, 2012. • Time: 10:00 a.m. to 3:00 p.m. • Location: The regulated area includes all waters of Boothbay Harbor, Maine in the vicinity of within John's Island the following points (NAD 83): 43°50′04″ N, 069°38′37″ W. 43°50′54″ N, 069°38′06″ W. 43°50′49″ N, 069°37′50″ W. 43°50′00″ N, 069°38′20″ W.
Rockland Harbor Lobster Boat Races	• Event Type: Power Boat Race. • Sponsor: Rockland Harbor Lobster Boat Race Committee. • Date: June 17, 2012. • Time: 9:00 a.m. to 4:00 p.m. • Location: The regulated area includes all waters of Rockland Harbor, Maine in the vicinity of the Rockland Breakwater Light within the following points (NAD 83): 44°05′59″ N, 069°04′53″ W. 44°06′43″ N, 069°05′25″ W. 44°06′50″ N, 069°05′05″ W. 44°06′05″ N, 069°04′34″ W.
Windjammer Days Parade of Ships	• Event Type: Tall Ship Parade. • Sponsor: Boothbay Region Chamber of Commerce. • Date: June 27, 2012. • Time: 12:00 p.m. to 5:00 p.m. • Location: The regulated area includes all waters of Boothbay Harbor, Maine in the vicinity of Tumbler's Island within the following points (NAD 83): 43°51′02″ N 069°37′33″ W. 43°50′47″ N 069°37′31″ W. 43°50′23″ N, 069°37′57″ W. 43°50′01″ N, 069°37′45″ W. 43°50′01″ N, 069°38′31″ W. 43°50′25″ N, 069°38′25″ W. 43°50′49″ N, 069°37′45″ W.

TABLE 1 (33 CFR 100.120)—Continued

Moosabec Lobster Boat Races	• Event Type: Power Boat Race. • Sponsor: Moosabec Boat Race Committee. • Date: June 30, 2012. In 33 CFR 100.120, this event is listed as occurring on July 4. • Time: 10:00 a.m. to 12:30 p.m. • Location: The regulated area includes all waters of Jonesport, Maine within the following points (NAD 83): 44°31′21″ N, 067°36′44″ W. 44°31′36″ N, 067°36′47″ W. 44°31′44″ N, 067°35′36″ W. 44°31′29″ N, 067°35′33″ W.
JULY	
The Great Race	• Event Type: Rowing and Paddling Boat Race. • Sponsor: Franklin County Chamber of Commerce. • Date: July 1, 2012. In 33 CFR 100.120, this event is listed as occurring during the 1st week of September. • Time: 10:00 a.m. to 12:30 p.m. • Location: The regulated area includes all waters of Lake Champlain in the vicinity of Saint Albans Bay within the following points (NAD 83): 44°47′18″ N, 073°10′27″ W. 44°47′10″ N, 073°08′51″ W.
Searsport Lobster Boat Races	• Event Type: Power Boat Race. • Sponsor: Searsport Lobster Boat Race Committee. • Date: July 14, 2012. • Time: 9:00 a.m. to 4:00 p.m. • Location: The regulated area includes all waters of Searsport Harbor, Maine within the following points (NAD 83): 44°26′50″ N, 068°55′20″ W. 44°27′04″ N, 068°55′26″ W. 44°27′12″ N, 068°54′35″ W. 44°26′59″ N, 068°54′29″ W.
Tall Ships Visiting Portsmouth	• Event Type: Regatta and Boat Parade. • Sponsor: Portsmouth Maritime Commission, Inc. • Date: July 11–15, 2012. In 33 CFR 100.120, this event is listed as occurring during the last weekend in May. • Time: 9:00 a.m. to 8:00 p.m. each day. • Location: The regulated area includes all waters of Portsmouth Harbor, New Hampshire in the vicinity of Castle Island within the following points (NAD 83): 43°03′11″ N, 070°42′26″ W. 43°03′18″ N, 070°41′51″ W. 43°04′42″ N, 070°42′11″ W. 43°04′28″ N, 070°44′12″ W. 43°05′36″ N, 070°45′56″ W. 43°05′29″ N, 070°46′09″ W. 43°04′19″ N, 070°44′16″ W. 43°04′22″ N, 070°42′33″ W.
Stonington Lobster Boat Races	• Event Type: Power Boat Race. • Sponsor: Stonington Lobster Boat Race Committee. • Date: July 15, 2012. In 33 CFR 100.120, this event is listed as occurring on the second weekend in July. • Time: 8:00 a.m. to 3:30 p.m. • Location: The regulated area includes all waters of Stonington, Maine within the following points (NAD 83): 44°08′55″ N, 068°40′12″ W. 44°09′00″ N, 068°40′15″ W. 44°09′11″ N, 068°39′42″ W. 44°09′07″ N, 068°39′39″ W.
Mayor's Cup Regatta	• Event Type: Sailboat Parade. • Sponsor: Plattsburgh Sunrise Rotary. • Date: July 14, 2012. • Time: 10:00 a.m. to 5:00 p.m. • Location: The regulated area includes all waters of Cumberland Bay on Lake Champlain in the vicinity of Plattsburgh, New York within the following points (NAD 83): 44°39′26″ N, 073°26′25″ W. 44°41′27″ N, 073°23′12″ W.

TABLE 1 (33 CFR 100.120)—Continued

The Challenge Race	• Event Type: Rowing and Paddling Boat Race. • Sponsor: Lake Champlain Maritime Museum. • Date: July 21, 2012. • Time: 11:00 a.m. to 3:00 p.m. • Location: The regulated area includes all waters of Lake Champlain in the vicinity of Button Bay State Park within the following points (NAD 83): 44°12′25″ N, 073°22′32″ W. 44°12′00″ N, 073°21′42″ W. 44°12′19″ N, 073°21′25″ W. 44°13′16″ N, 073°21′36″ W.
Arthur Martin Memorial Regatta	• Event Type: Rowing and Paddling Boat Race. • Sponsor: I Row. • Date: July 21, 2012. • Time: 10:00 a.m. to 2:00 p.m. • Location: The regulated area includes all waters of the Piscataqua River, in the vicinity of Kittery Point, Maine within the following points (NAD 83): 43°03′51″ N, 070°41′55″ W. 43°04′35″ N, 070°42′18″ W. 43°04′42″ N, 070°43′15″ W. 43°05′14″ N, 070°43′12″ W. 43°05′14″ N, 070°43′06″ W. 43°04′44″ N, 070°43′11″ W. 43°04′35″ N, 070°42′13″ W. 43°03′53″ N, 070°41′40″ W.
Friendship Lobster Boat Races	• Event Type: Power Boat Race. • Sponsor: Friendship Lobster Boat Race Committee. • Date: July 28, 2012. • Time: 9:30 a.m. to 3:00 p.m. • Location: The regulated area includes all waters of Friendship Harbor, Maine within the following points (NAD 83): 43°57′51″ N, 069°20′46″ W. 43°58′14″ N, 069°19′53″ W. 43°58′19″ N, 069°20′01″ W. 43°58′00″ N, 069°20′46″ W.
Harpswell Lobster Boat Races	• Event Type: Power Boat Race. • Sponsor: Harpswell Lobster Boat Race Committee. • Date: July 29, 2012. • Time: 10:00 a.m. to 3:00 p.m. • Location: The regulated area includes all waters of Potts Harbor, Maine within the following points (NAD 83): 43°46′50″ N, 070°01′37″ W. 43°46′50″ N, 070°01′18″ W. 43°46′28″ N, 070°01′36″ W. 43°46′28″ N, 070°01′19″ W.
AUGUST	
Eggemoggin Reach Regatta	• Event Type: Wooden Boat Parade. • Sponsor: Rockport Marine, Inc. and Brookline Boat Yard. • Date: August 4, 2012; Rain date: August 5, 2012. • Time: 10:00 a.m. to 8:00 p.m. • Location: The regulated area includes all waters of Eggemoggin Reach and Jericho Bay in the vicinity of Naskeag Harbor, Maine within the following points (NAD 83): 44°15′16″ N, 068°36′26″ W. 44°12′41″ N, 068°29′26″ W. 44°07′38″ N, 068°31′30″ W. 44°12′54″ N, 068°33′46″ W.
Lake Champlain Dragon Boat Festival	• Event Type: Rowing and Paddling Boat Race. • Sponsor: Dragonheart Vermont. • Date: August 5, 2012. • Time: 7:00 a.m. to 6:00 p.m. • Location: The regulated area includes all waters of Burlington Bay within the following points (NAD 83): 44°28′51″ N, 073°13′28″ W. 44°28′40″ N, 073°13′40″ W. 44°28′37″ N, 073°13′29″ W. 44°28′40″ N, 073°13′17″ W.

TABLE 1 (33 CFR 100.120)—Continued

Southport Rowgatta Rowing and Paddling Boat Race	• Event Type: Rowing and Paddling Boat Race. • Sponsor: Boothbay Region YMCA. • Date: August 11, 2012. • Time: 7:00 a.m. to 4:00 p.m. • Location: The regulated area includes all waters of Sheepscot Bay and Boothbay, on the shore side of Southport Island, Maine within the following points (NAD 83): 43°50′26″ N, 069°39′10″ W. 43°49′10″ N, 069°38′35″ W. 43°46′53″ N, 069°39′06″ W. 43°46′50″ N, 069°39′32″ W. 43°49′07″ N, 069°41′43″ W. 43°50′19″ N, 069°41′14″ W. 43°51′11″ N, 069°40′06″ W.
Winter Harbor Lobster Boat Races	• Event Type: Power Boat Race. • Sponsor: Winter Harbor Chamber of Commerce. • Date: August 11, 2012. • Time: 9:00 a.m. to 3:00 p.m. • Location: The regulated area includes all waters of Winter Harbor, Maine within the following points (NAD 83): 44°22′06″ N, 068°05′13″ W. 44°23′06″ N, 068°05′08″ W. 44°23′04″ N, 068°04′37″ W. 44°22′05″ N, 068°04′44″ W.
Merritt Brackett Lobster Boat Races	• Event Type: Power Boat Race. • Sponsor: Town of Bristol, Maine. • Date: August 12, 2012. • Time: 10:00 a.m. to 3:00 p.m. • Location: The regulated area includes all waters of Pemaquid Harbor, Maine within the following points (NAD 83): 43°52′16″ N, 069°32′10″ W. 43°52′41″ N, 069°31′43″ W. 43°52′35″ N, 069°31′29″ W. 43°52′09″ N, 069°31′56″ W.
Multiple Sclerosis Regatta	• Event Type: Regatta and Sailboat Race. • Sponsor: Maine Chapter, Multiple Sclerosis Society. • Date: August 18, 2012. • Time: 11:00 a.m. to 5:00 p.m. • Location: The regulated area for the start of the race includes all waters of Casco Bay, Maine in the vicinity of Peaks Island within the following points (NAD 83): 43°40′24″ N, 070°14′20″ W. 43°40′36″ N, 070°13′56″ W. 43°39′58″ N, 070°13′21″ W. 43°39′46″ N, 070°13′51″ W.
Multiple Sclerosis Harborfest Tugboat Race	• Event Type: Power Boat Race. • Sponsor: Maine Chapter, National Multiple Sclerosis Society. • Date: August 19, 2012. • Time: 10:00 a.m. to 3:00 p.m. • Location: The regulated area includes all waters of Portland Harbor, Maine in the vicinity of Maine State Pier within the following points (NAD 83): 43°40′25″ N, 070°14′21″ W. 43°40′36″ N, 070°13′56″ W. 43°39′58″ N, 070°13′21″ W. 43°39′47″ N, 070°13′51″ W.
SEPTEMBER	
Pirates Festival Lobster Boat Races	• Event Type: Power Boat Race. • Sponsor: Eastport Pirates Festival. • Date: September 9, 2012. • Time: 11:00 a.m. to 6:00 p.m. • Location: The regulated area includes all waters in the vicinity of Eastport Harbor, Maine within the following points (NAD 83): 44°54′14″ N, 066°58′52″ W. 44°54′14″ N, 068°58′56″ W. 44°54′24″ N, 066°58′52″ W. 44°54′24″ N, 066°58′56″ W.

TABLE 2 (33 CFR 165.171)

MAY	
Hawgs, Pies, & Fireworks	• Event Type: Fireworks Display. • Sponsor: Gardiner Maine Street. • Date: May 26, 2012. • Time: 6:00 p.m. to 10:00 p.m. • Location: In the vicinity of the Gardiner Waterfront, Gardiner, Maine in approximate position: 44°13′52″ N, 069°46′08″ W (NAD 83).
JUNE	
Rotary Waterfront Days Fireworks	• Event Type: Fireworks Display. • Sponsor: Gardiner Rotary. • Date: June 20/23, 2012. • Time: 9:00 p.m. to 10:00 p.m. • Location: In the vicinity of the Gardiner Waterfront, Gardiner, Maine in approximate position: 44°13′52″ N, 069°46′08″ W (NAD 83).
Tri for a Cure Swim Clinics	• Event Type: Swim Event. • Sponsor: Maine Cancer Foundation. • Date & Time: June 24, 2012, 3:30–5:00 p.m.; June 26, 2012, 5:30–7:00 p.m. In 33 CFR 165.171, this event is listed as occurring on the third Sunday and Thursday in July. • Location: The regulated area includes all waters of Portland Harbor, Maine in the vicinity of Spring Point Light within the following points (NAD 83): 43°39′01″ N, 070°13′32″ W. 43°39′07″ N, 070°13′29″ W. 43°39′06″ N, 070°13′41″ W. 43°39′01″ N, 070°13′36″ W.
Windjammer Days Fireworks	• Event Type: Fireworks Display. • Sponsor: Boothbay Harbor Region Chamber of Commerce. • Date: June 27, 2012. • Time: 8:00 p.m. to 10:30 p.m. • Location: In the vicinity of McFarland Island, Boothbay Harbor, Maine in approximate position: 43°50′38″ N, 069°37′57″ W (NAD 83).
Jonesport 4th of July Fireworks	• Event Type: Fireworks Display. • Sponsor: Jonesport 4th of July Committee. • Date: June 30, 2012. In 33 CFR 165.171, this event is listed as occurring on July 4. • Time: 9:00 p.m. to 10:30 p.m. • Location: In the vicinity of Beals Island, Jonesport, Maine in approximate position: 44°31′18″ N, 067°36′43″ W (NAD 83).
JULY	
St. Albans Day Fireworks	• Event Type: Fireworks Display. • Sponsor: St. Albans Area Chamber of Commerce. • Date: July 1, 2012. In 33 CFR 165.171, this event is listed as occurring on July 4. • Time: 9:00 p.m. to 10:00 p.m. • Location: From the St. Albans Bay dock in St. Albans Bay, Vermont in the approximate position: 44°48′25″ N, 073°08′23″ W (NAD 83).
Tri for a Cure Swim Clinics	• Event Type: Swim Event. • Sponsor: Maine Cancer Foundation. • Date & Time: July 1, 2012, 10:00–11:30 a.m.; July 10, 2012, 5:30–7:00 p.m. In 33 CFR 165.171, this event is listed as occurring on the third Sunday and Thursday in July. • Location: The regulated area includes all waters of Portland Harbor, Maine in the vicinity of Spring Point Light within the following points (NAD 83): 43°39′01″ N, 070°13′32″ W. 43°39′07″ N, 070°13′29″ W. 43°39′06″ N, 070°13′41″ W. 43°39′01″ N, 070°13′36″ W.
Burlington Independence Day Fireworks	• Event Type: Firework Display. • Sponsor: City of Burlington, Vermont. • Date: July 3, 2012. • Time: 9:00 p.m. to 11:00 p.m.

TABLE 2 (33 CFR 165.171)—Continued

	• Location: From a barge in the vicinity of Burlington Harbor, Burlington, Vermont in approximate position: 44°28′31″ N, 073°13′31″ W (NAD 83).
Camden 3rd of July Fireworks	• Event Type: Fireworks Display. • Sponsor: Camden, Rockport, Lincolnville Chamber of Commerce. • Date: July 3, 2012. • Time: 8:00 p.m. to 10:00 p.m. • Location: In the vicinity of Camden Harbor, Maine in approximate position: 44°12′32″ N, 069°02′58″ W (NAD 83).
Bangor 4th of July Fireworks	• Event Type: Fireworks Display. • Sponsor: Bangor 4th of July Fireworks. • Date: July 4, 2012. • Time: 8:30 p.m. to 11:00 p.m. • Location: In the vicinity of the Bangor Waterfront, Bangor, Maine in approximate position: 44°47′27″ N, 068°46′31″ W (NAD 83).
Bar Harbor 4th of July Fireworks	• Event Type: Fireworks Display. • Sponsor: Bar Harbor Chamber of Commerce. • Date: July 4, 2012. • Time: 8:00 p.m. to 11:00 p.m. • Location: In the vicinity of Bar Harbor Town Pier, Bar Harbor, Maine in approximate position: 44°23′31″ N, 068°12′15″ W (NAD 83).
Boothbay Harbor 4th of July Fireworks	• Event Type: Fireworks Display. • Sponsor: Town of Boothbay Harbor. • Date: July 4, 2012; Rain date: July 5, 2012. • Time: 8:00 p.m. to 10:30 p.m. • Location: In the vicinity of McFarland Island, Boothbay Harbor, Maine in approximate position: 43°50′38″ N, 069°37′57″ W (NAD 83).
Colchester 4th of July Fireworks	• Event Type: Fireworks Display. • Sponsor: Town of Colchester, Recreation Department. • Date: July 4, 2012. • Time: 8:00 p.m. to 10:00 p.m. • Location: In the vicinity of Bayside Beach and Mallets Bay in Colchester, Vermont at approximate position: 44°32′44″ N, 073°13′10″ W (NAD 83).
Eastport 4th of July Fireworks	• Event Type: Fireworks Display. • Sponsor: Eastport 4th of July Committee. • Date: July 4, 2012. • Time: 8:00 p.m. to 10:00 p.m. • Location: From the Waterfront Public Pier in Eastport, Maine at approximate position: 44°54′25″ N, 066°58′55″ W (NAD 83).
Ellis Short Sand Park Trustee Fireworks	• Event Type: Fireworks Display. • Sponsor: William Burnham • Date: July 4, 2012; Rain date: July 5, 2012. • Time: 8:30 p.m. to 11:00 p.m. • Location: In the vicinity of York Beach, Maine in approximate position: 43°10′27″ N, 070°48′31″ W (NAD 83).
Hampton Beach 4th of July Fireworks	• Event Type: Fireworks Display. • Sponsor: Hampton Beach Village District. • Date: July 4, 2012. • Time: 8:30 p.m. to 11:00 p.m. • Location: In the vicinity of Hampton Beach, New Hampshire in approximate position: 42°54′40″ N, 070°36′25″ W (NAD 83).
Main Street Heritage Days 4th of July Fireworks	• Event Type: Fireworks Display. • Sponsor: Main Street Inc. • Date: July 4, 2012. • Time: 8:00 p.m. to 10:30 p.m. • Location: In the vicinity of Reed and Reed Boat Yard, Woolwich, Maine in approximate position: 43°54′56″ N, 069°48′16″ W (NAD 83).
Portland Harbor 4th of July Fireworks	• Event Type: Fireworks Display. • Sponsor: Department of Parks and Recreation, Portland, Maine. • Date: July 4, 2012; Rain date: July 5, 2012. • Time: 8:30 p.m. to 10:30 p.m.

TABLE 2 (33 CFR 165.171)—Continued

	• Location: In the vicinity of East End Beach, Portland, Maine in approximate position: 43°40′16″ N, 070°14′44″ W (NAD 83).
Stonington 4th of July Fireworks	• Event Type: Fireworks Display. • Sponsor: Deer Isle—Stonington Chamber of Commerce. • Date: July 4, 2012; Rain date: July 7, 2012. • Time: 8:00 p.m. to 10:30 p.m. • Location: In the vicinity of Two Bush Island, Stonington, Maine in approximate position: 44°08′57″ N, 068°39′54″ W (NAD 83).
Peaks to Portland Swim	• Event Type: Swim Event. • Sponsor: Cumberland County YMCA. • Date: July 21, 2012; Rain date: July 22, 2012. In 33 CFR 165.171, this event is listed as occurring on a Saturday during the last week of July. • Time: 7:30 a.m. to 2:00 p.m. • Location: The regulated area includes all waters of Portland Harbor between Peaks Island and East End Beach in Portland, Maine within the following points (NAD 83): 43°39′20″ N, 070°11′58″ W. 43°39′45″ N, 070°13′19″ W. 43°40′11″ N, 070°14′13″ W. 43°40′08″ N, 070°14′29″ W. 43°40′00″ N, 070°14′23″ W. 43°39′34″ N, 070°13′31″ W. 43°39′13″ N, 070°11′59″ W.
Richmond Days Fireworks	• Event Type: Fireworks Display. • Sponsor: Town of Richmond, Maine. • Date: July 28, 2012. • Time: 8:00 a.m. to 10:00 p.m. • Location: From a barge in the vicinity of the inner harbor, Tenants Harbor, Maine in approximate position: 44°08′42″ N, 068°27′06″ W (NAD 83).
Tri for a Cure Triathlon	• Event Type: Swim Event. • Sponsor: Maine Cancer Foundation. • Date: July 29, 2012. • Time: 9:00 a.m. to 1:00 p.m. • Location: The regulated area includes all waters of Portland Harbor, Maine in the vicinity of Spring Point Light within the following points (NAD 83): 43°39′01″ N, 070°13′32″ W. 43°39′07″ N, 070°13′29″ W. 43°39′06″ N, 070°13′41″ W. 43°39′01″ N, 070°13′36″ W.
Colchester Triathlon	• Event Type: Swim Event. • Sponsor: Colchester Parks and Recreation Department. • Date: July 29, 2012. In 33 CFR 165.171, this event is listed as occurring on a Wednesday in the last week of July. • Time: 7:00 a.m. to 11:00 a.m. • Location: The regulated area includes all waters of Malletts Bay on Lake Champlain, Vermont within the following points (NAD 83): 44°32′18″ N, 073°12′35″ W. 44°32′28″ N, 073°12′56″ W. 44°32′57″ N, 073°12′38″ W.
August	
Westerlund's Landing Party Fireworks	• Event Type: Fireworks Display. • Sponsor: Portside Marina. • Date: August 4, 2012. • Time: 8:00 p.m. to 10:30 p.m. • Location: In the vicinity of Westerlund's Landing in South Gardiner, Maine in approximate position: 44°10′19″ N, 069°45′24″ W (NAD 83).
Y-Tri Triathlon	• Event Type: Swim Event. • Sponsor: Plattsburgh YMCA. • Date: August 4, 2012. • Time: 9:00 a.m. to 10:00 a.m. • Location: The regulated area includes all waters of Treadwell Bay on Lake Champlain in the vicinity of Point Au Roche State Park, Plattsburgh, New York within the following points (NAD 83):

TABLE 2 (33 CFR 165.171)—Continued

	44°46′30″ N, 073°23′26″ W. 44°46′17″ N, 073°23′26″ W. 44°46′17″ N, 073°23′46″ W. 44°46′29″ N, 073°23′46″ W.
York Beach Fire Department Fireworks	• Event Type: Fireworks Display. • Sponsor: York Beach Fire Department. • Date: August 5, 2012. • Time: 8:30 p.m. to 11:30 p.m. • Location: In the vicinity of Short Sand Cove in York, Maine in approximate position: 43°10′27″ N, 070°36′25″ W (NAD 83).
Rockland Breakwater Swim	• Event Type: Swim Event. • Sponsor: Pen-Bay Masters. • Date: August 18, 2012. In 33 CFR 165.171, this event is listed as occurring on a Saturday during the fourth week of August. • Time: 7:30 a.m. to 1:30 p.m. • Location: The regulated area includes all waters of Rockland Harbor, Maine in the vicinity of Jameson Point within the following points (NAD 83): 44°06′16″ N, 069°04′39″ W. 44°06′13″ N, 069°04′36″ W. 44°06′12″ N, 069°04′43″ W. 44°06′17″ N, 069°04′44″ W. 44°06′18″ N, 069°04′40″ W.
Greater Burlington YMCA Lake Swim	• Event Type: Swim Event. • Sponsor: Greater Burlington YMCA. • Date: August 25, 2012; Rain date August 26, 2012. In 33 CFR 165.171, this event is listed as occurring on the second weekend in July. • Time: 7:00 a.m. to 5:00 p.m. • Location: The regulated area includes all waters in Lake Champlain in the vicinity of North Hero Island within the following points (NAD 83): 44°46′55″ N, 073°22′14″ W. 44°47′08″ N, 073°19′05″ W. 44°46′48″ N, 073°17′13″ W. 44°46′10″ N, 073°16′39″ W. 44°41′08″ N, 073°20′58″ W. 44°41′36″ N, 073°23′01″ W.
Windjammer Weekend Fireworks	• Event Type: Fireworks Display. • Sponsor: Town of Camden, Maine. • Date: August 31, 2012. In 33 CFR 165.171, this event is listed as occurring on the Friday of the first weekend in September. • Time: 8:30 p.m. to 10:00 p.m. • Location: From a barge in the vicinity of Northeast Point, Camden Harbor, Maine in approximate position: 44°12′10″ N, 069°03′11″ W (NAD 83).
SEPTEMBER	
Eastport Pirate Festival Fireworks	• Event Type: Fireworks Display. • Sponsor: Eastport Pirate Festival. • Date: September 8, 2012. • Time: 7:00 p.m. to 10:00 p.m. • Location: From the Waterfront Public Pier in Eastport, Maine at approximate position: 44°54′17″ N, 066°58′58″ W (NAD 83).
The Lobsterman Triathlon	• Event Type: Swim Event. • Sponsor: Tri-Maine Productions. • Date: September 15, 2012. In 33 CFR 165.171, this event is listed as occurring on the second weekend in September. • Time: 8:00 a.m. to 11:00 a.m. • Location: The regulated area includes all waters in the vicinity of Winslow Park in South Freeport, Maine within the following points (NAD 83): 43°47′59″ N, 070°06′56″ W. 43°47′44″ N, 070°06′56″ W. 43°47′44″ N, 070°07′27″ W. 43°47′57″ N, 070°07′27″ W.
Eliot Festival Day Fireworks	• Event Type: Fireworks Display. • Sponsor: Eliot Festival Day Committee.

TABLE 2 (33 CFR 165.171)—Continued

	• Date: September 28, 2012. In 33 CFR 165.171, this event is listed as occurring during the fourth weekend in September. • Time: 8:00 p.m. to 10:30 p.m. • Location: In the vicinity of Eliot Town Boat Launch, Eliot, Maine in approximate position: 43°08′56″ N, 070°49′52″ W (NAD 83).

This notice is issued under authority of 33 CFR 100.120, 33 CFR 165.171, and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts. If the COTP determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: May 3, 2012.

B.S. Gilda,

Commander, U.S. Coast Guard, Acting Captain of the Port Sector Northern New England.

[FR Doc. 2012–12562 Filed 5–23–12; 8:45 a.m.]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0154; FRL–9672–7]

Approval and Promulgation of Implementation Plans; New Mexico; Albuquerque/Bernalillo County; Fees for Permits and Administrative Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions which repeal and replace existing rules, and revisions to the applicable State Implementation Plan (SIP) for New Mexico Albuquerque/Bernalillo County, which relate to fee requirement regulations. The repeal and replace and SIP revisions approved today will address Clean Air Act (the Act or CAA) requirements related to fees for, in part, reviewing and acting on specific permit applications received by the City of Albuquerque/Bernalillo County Environmental Health Department (EHD or Department); fees to partially offset the administrative cost of permit-related administrative hearings; funding for small business stationary sources; and fees to cover administrative expenses incurred by the Department in implementing the New Mexico Air Quality Control Act, the joint Air Quality Control Board (AQCB) ordinances, and the Albuquerque/Bernalillo County AQCB regulations of the New Mexico Statutes Annotated (NMSA) 1978. EPA finds that these rules and revisions comply with applicable provisions of the CAA and is approving them into the SIP. This action is being taken under section 110 of the Act.

DATES: This final rule is effective on June 25, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2007–0154. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 Freedom of Information Act Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The New Mexico submittals are also available for public inspection at the County Air Agency listed below during official business hours by appointment: Air Quality Division, Environmental Health Department, 3rd Floor, Suite 3023, One Civic Plaza NW., Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Mohr, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7289; fax number (214) 665–6762; email address *mohr.ashley@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. This supplementary information section is arranged as follows:

I. What is the background for this action?
II. What final action is EPA taking?
III. Statutory and Executive Order Reviews

I. What is the background for this action?

The background for today's action is discussed in detail in our November 4, 2011, proposal (76 FR 68385). In that notice, we proposed to approve four submittals from the State of New Mexico that apply in Bernalillo County, pursuant to the CAA, that address the fee requirements specified in the CAA section 110(a)(2). Specifically, the SIP revisions address section 110(a)(2) Clean Air Act (the Act or CAA) requirements related to fees for, in part, reviewing and acting on specific permit applications received by the City of Albuquerque/Bernalillo County Environmental Health Department (EHD or Department); fees to partially offset the administrative cost of permit-related administrative hearings; funding for small business stationary sources; and fees to cover administrative expenses incurred by the Department in implementing the New Mexico Air Quality Control Act, the joint Air Quality Control Board (AQCB) ordinances, and the Albuquerque/Bernalillo County AQCB regulations of the New Mexico Statutes Annotated (NMSA) 1978. New Mexico's SIP submittals are dated May 24, 2011, September 7, 2004, February 2, 2007, and December 15, 2010.

Our November 4, 2011, proposal provides a detailed description of the submittals and the rationale for EPA's proposed actions, together with a discussion of the opportunity to comment. The public comment period for these actions closed on December 5,

2011, and we did not receive any comments.

II. What final action is EPA taking?

We are fully approving the New Mexico SIP revisions submitted on May 24, 2011, September 7, 2004, February 2, 2007, and December 15, 2010, relating to permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit. This action is being taken under section 110 of the CAA.

III. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 23, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposed of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: May 3, 2012.

Samuel Coleman,

Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart GG—New Mexico

■ 1. The second table in § 52.1620(c) entitled ''EPA Approved Albuquerque/Bernalillo County, NM Regulations'' is amended as follows:

■ a. Removing the heading ''Albuquerque/Bernalillo County, Air Quality Control Regulations'' and removing the entry for Section 21, Permit Fees; and

■ b. Adding a new entry for Part 2 (20.11.2 NMAC) in numerical order by part number to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

EPA Approved Albuquerque/Bernalillo County, NM Regulations

State citation	Title/subject	State approval/ effective date	EPA approval date	Explanation
*	*	*	*	*
Part 2 (20.11.2 NMAC)	Fees	1/10/2011	5/24/2012 [Insert FR page number where document begins].	NOT in SIP: references to Operating Permits (20.11.42 NMAC) in subsection (A) of 20.11.2.2, subsection (B) of 20.11.2.11, subsection (B) of 20.11.2.12, subsections (A) and (B) of 20.11.2.13, and subsection (B) of 20.11.2.21.
*	*	*	*	*

[FR Doc. 2012–12497 Filed 5–23–12; 8:45 a.m.]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2012–0112; FRL–9674–2]

Partial Approval and Promulgation of Implementation Plans; Washington: Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving the State Implementation Plan (SIP) submittal from the State of Washington to demonstrate that the SIP meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standard (NAAQS) promulgated for ozone on July 18, 1997. EPA finds that the current Washington SIP meets the following 110(a)(2) infrastructure elements for the 1997 8-hour ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), except for portions related to the major source Prevention of Significant Deterioration (PSD) permitting program which is implemented under a Federal Implementation Plan.

DATES: This action is effective on June 25, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2012–0112. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt at telephone number: (206) 553–0256, email address: *hunt.jeff@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'' or ''our'' are used, we mean EPA. Information is organized as follows:

Table of Contents

I. Background
II. Scope of Action
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

On July 18, 1997, EPA promulgated a new NAAQS for ozone. EPA revised the ozone NAAQS to provide an 8-hour averaging period which replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856). The CAA requires SIPs meeting the requirements of sections 110(a)(1) and (2) be submitted by states within 3 years after promulgation of a new or revised standard. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards, so-called ''infrastructure'' requirements. To help states meet this statutory requirement for the 1997 8-hour ozone NAAQS, EPA issued guidance to address infrastructure SIP elements under section 110(a)(1) and (2).[1] In the case of the 1997 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone standards. The State of Washington submitted a certification to EPA on January 24, 2012, certifying that Washington's SIP meets the infrastructure obligations for the 1997 8-hour ozone NAAQS. The certification included an analysis of Washington's SIP as it relates to each section of the infrastructure requirements with regard to the 1997 8-hour ozone NAAQS. On March 6, 2012, EPA published a notice of proposed rulemaking (NPR) for the State of Washington (77 FR 13238) to partially approve the state's infrastructure SIP for the 1997 ozone NAAQS. Specifically in the NPR, EPA proposed approval of Washington's SIP as meeting the requirements for the following 110(a)(2) infrastructure elements for the 1997 8-hour ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), except for portions related to the major source Prevention of Significant Deterioration (PSD) permitting program which is implemented under a Federal Implementation Plan codified at 40 CFR 52.2497. Also, as discussed in the NPR, this action does not address 110(a)(2)(D)(i) and 110(a)(2)(I). The public comment period for EPA's NPR closed on April 5, 2012. EPA received no comments on the proposed action. Accordingly, EPA is taking final action to approve the provisions as discussed in the NPR.

II. Scope of Action

This partial SIP approval does not extend to sources or activities located in ''Indian Country'' as defined in 18 U.S.C. 1151.[2] Consistent with previous Federal program approvals or delegations, EPA will continue to implement the Act in Indian Country because Washington did not adequately demonstrate authority over sources and activities located within the exterior boundaries of Indian reservations and other areas of Indian Country. The one exception is within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area. Therefore, EPA's proposed SIP approval applies to sources and activities on nontrust lands within the 1873 Survey Area.

III. Final Action

EPA is approving the January 24, 2012, SIP submittal from the State of Washington to demonstrate that the SIP meets the requirements of section 110(a)(1) and (2) of the CAA for the NAAQS promulgated for ozone on July 18, 1997. EPA is approving the following section 110(a)(2) infrastructure elements for Washington

[1] William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards. ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards.'' Memorandum to EPA Air Division Directors, Regions I–X, October 2, 2007.

[2] ''Indian country'' is defined under 18 U.S.C. 1151 as: (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation.

for the 1997 ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), except for portions related to the major source Prevention of Significant Deterioration (PSD) permitting program which is implemented under a Federal Implementation Plan codified at 40 CFR 52.2497. EPA is taking no action on infrastructure elements (D)(i) and (I) for the 1997 ozone NAAQS. This action is being taken under section 110 of the CAA.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 23, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: May 4, 2012.

Michelle L. Pirzadeh,

Deputy Regional Administrator, Region 10.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart WW—Washington

■ 2. Section 52.2491 is added to read as follows:

§ 52.2491 Section 110(a)(2) infrastructure requirements.

On January 24, 2012, Washington Department of Ecology submitted a certification to address the requirements of CAA Section 110(a)(1) and (2) for the 1997 8-hour ozone NAAQS. EPA approves the submittal as meeting the following 110(a)(2) infrastructure elements for the 1997 8-hour ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), except for portions related to the major source Prevention of Significant Deterioration (PSD) permitting program which is implemented under a Federal Implementation Plan codified at 40 CFR 52.2497.

[FR Doc. 2012–12491 Filed 5–23–12; 8:45 a.m.]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51 and 54

[WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; FCC 11–161]

Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission (Commission) published in the **Federal Register** of May 8, 2012, a document announcing the Office of Management and Budget (OMB) approval of information collections associated with the Commission's; *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support, Report and Order,* (*Order*), released on November 18, 2011. That notice was consistent with the *Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the

effective date of those rules once it receives OMB approval. This document corrects information in the **SUPPLEMENTARY INFORMATION** section of that document.

DATES: Effective on May 24, 2012.

FOR FURTHER INFORMATION CONTACT: Alex Minard, Wireline Competition Bureau, (202) 418–7400; Email: *Alexander.Minard@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission published a document in the **Federal Register** of May 8, 2012, (77 FR 26987), announcing OMB's approval of information collections associated with the Commission's *Order,* released on November 18, 2011. That notice was consistent with the *Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of those rules once it receives OMB approval.

In rule FR Doc. 2012–10631 published at 77 FR 26987, May 8, 2012 make the following correction. On page 26988, in the third column, in the third paragraph, in the second parenthetical of the paragraph, remove ''five'' and add in its place ''two''.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2012–12674 Filed 5–23–12; 8:45 a.m.]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; FCC 12–52]

Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Federal Communications Commission (Commission) reconsiders and clarifies certain aspects of the *USF/ICC Transformation Order* in response to various petitions for reconsideration and/or clarification. We grant in part and deny in part petitions relating to certain aspects of eligible telecommunications carrier (ETC) reporting obligations, while maintaining our overall framework for ETC accountability. We also grant in part and deny in part a petition relating to universal service support adjustments for carriers with artificially low local rates, making a minor adjustment in the timing for the sampling of rates to be used in calculating any such adjustments. We also clarify certain implementation details for both the reporting requirements and the rate floor requirement. In addition, we make a minor adjustment to the rule relating to the calculation of baseline support for competitive carriers serving remote areas of Alaska. We also clarify that the framework established for rate-of-return companies to extend broadband upon reasonable request would take into account any unique circumstances, such as backhaul costs, that may impact the ability of such companies, in Alaska or elsewhere, to extend broadband to their customers. We also deny a number of other requests relating to support for carriers serving Alaska. We deny a request to reconsider which 12 months of revenues will be considered for purposes of defining Eligible Recovery. Finally, we deny a request to reconsider the use of tariff forecasts for calculating the baseline for rate-of-return carriers.

DATES: Effective June 25, 2012, except for the amendments made to § 54.313(h) in this document, which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for that section.

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484 and Victoria Goldberg, Wireline Competition Bureau, (202) 418–1520.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Order on Reconsideration in WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; FCC 12–52, released on May 14, 2012. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554. Or at the following Internet address: *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0514/FCC-12-52A1.pdf.*

I. Introduction

1. In this Order, we reconsider and clarify certain aspects of the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011, in response to various petitions for reconsideration and/or clarification. The *USF/ICC Transformation Order* represents a careful balancing of policy goals, equities, and budgetary constraints. This balance was required in order to advance the fundamental goals of universal service and intercarrier compensation reform within a defined budget while simultaneously providing sufficient transitions for stakeholders to adapt. While reconsideration of a Commission's decision may be appropriate when a petitioner demonstrates that the original order contains a material error or omission, or raises additional facts that were not known or did not exist until after the petitioner's last opportunity to present such matters, if a petition simply repeats arguments that were previously considered and rejected in the proceeding, due to the balancing involved in this proceeding, we are likely to deny it.

2. With this standard in mind, in this Order we take several limited actions stemming from reconsideration petitions. We grant in part and deny in part petitions relating to certain aspects of eligible telecommunications carrier (ETC) reporting obligations, while maintaining our overall framework for ETC accountability. We also grant in part and deny in part a petition relating to universal service support adjustments for carriers with artificially low local rates, making a minor adjustment in the timing for the sampling of rates to be used in calculating any such adjustments. We also clarify certain implementation details for both the reporting requirements and the rate floor requirement. In addition, we make a minor adjustment to the rule relating to the calculation of baseline support for competitive carriers serving remote areas of Alaska. We also clarify that the framework established for rate-of-return companies to extend broadband upon reasonable request would take into account any unique circumstances, such as backhaul costs, that may impact the ability of such companies, in Alaska or elsewhere, to extend broadband to their customers. We also deny a number of other requests relating to support for carriers serving Alaska. We deny a request to reconsider which 12 months of revenues will be considered for purposes of defining Eligible Recovery. Finally, we deny a request to reconsider the use of tariff forecasts for calculating the baseline for rate-of-return carriers.

II. Reporting Requirements

A. Reporting Requirements for State-Designated ETCs

3. In the *USF/ICC Transformation Order,* we extended the annual reporting requirements to all recipients of high-cost/Connect America Fund (CAF) support. Previously, our rules required annual reports only from federally-designated ETCs. A number of petitioners oppose requiring state-designated ETCs to file § 54.313 annual reports. The Rural Associations argued in their petition that we should respect the rights and discretion of the states. Petitioners also argued that it would be unfair to require state-designated ETCs to report in 2012 on information they were not previously required to maintain. USTelecom and other commenters asked that we clarify that we intended to preempt state reporting requirements. Finally, USTelecom argued that the Commission violated the Paperwork Reduction Act (PRA) by not seeking approval from the Office of Management and Budget for the expanded application of the requirements in § 54.313(a)(1) through (a)(6) to state-designated ETCs and because ''[t]he new reporting requirements amount to a scatter-shot data collection effort—in many cases with no potential to add any value to Commission decision-making.''

1. No Exemption for State-Designated ETCs

4. Rural Associations assert that the *USF/ICC Transformation Order* ''provides no evidence of inadequate, negligent or otherwise unsatisfactory monitoring of state-designated ETCs by state commissions during the more than 14 years that they have been responsible for that task.'' This assertion ignores the discussion in the *Order,* 76 FR 76623, December 8, 2011, of the GAO's criticism of the lack of accountability for recipients of high-cost support due to lack of uniformity in reporting requirements among the states. As NCTA noted in its comments, ''reporting is an essential element of every government subsidy program'' We decline to exempt state-designated ETCs from the reporting requirements imposed by new § 54.313. Petitioners have neither presented new evidence nor raised new arguments that persuade us to reconsider including state-designated ETCs within § 54.313's purview.

2. No Preemption of State Reporting Requirements

5. We next deny USTelecom's request to clarify that we intended to preempt state reporting requirements when we implemented new § 54.313. As we stated in the *USF/ICC Transformation Order,* the federal reporting requirements in § 54.313 are intended to ''serve as a baseline requirement for all ETCs.'' Indeed, Congress expressly provided the states a regulatory role in this area. We did not preempt the states from imposing state-specific reporting requirements, as long as those additional reporting requirements do not create burdens that thwart achievement of the universal service reforms adopted by the Commission. Parties have provided no evidence that the states will act in a way that burdens the federal support mechanism in response to the changes implemented by the *USF/ICC Transformation Order* and thus have neither presented new evidence nor raised arguments that persuade us to reconsider our decisions in this regard.

6. We also note that we do not expect state-designated ETCs to report to the Commission information in their 2012 filing that they were not previously required to collect. As the Wireline Competition Bureau stated in the *Clarification Order,* it would be impossible for entities that were not previously required to collect and report the information required by § 54.313 with respect to their provision of voice service in 2011 to report such information to the Commission. But if a state-designated ETC is subject to a state requirement to report some or all of this information annually to the state, then the ETC should file a copy of any relevant information with the Commission in 2012. Requiring a state-designated ETC to file with the Commission the same information it already reports to a state commission imposes at most a minimal burden.

3. Paperwork Reduction Act Procedural Requirements

7. We disagree with the premise of USTelecom's argument that the Commission has violated the PRA by extending § 54.313(a)(1) through (a)(6)'s new reporting requirements to state-designated ETCs. In fact, the Commission sought and has received OMB approval for these provisions. Nor are we persuaded by USTelecom's general argument that the reporting requirements add no value to Commission decision making. As we explained in the *USF/ICC Transformation Order,* these requirements are necessary and appropriate ''to ensure the continued availability of high-quality voice services and monitor progress in achieving our broadband goals and to assist the FCC in determining whether the funds are being used appropriately.'' We find that Petitioners have neither presented new evidence nor raised arguments that persuade us to reconsider our decisions in this regard.

B. Reporting Requirements for Carriers Whose Support Is Being Phased Down

8. Certain petitioners and commenters argue that it is unreasonable to impose the new reporting obligations on competitive ETCs whose support is being phased down. In the *USF/ICC Transformation Order,* we stated that such ETCs ''will not be required to submit any of the new information or certifications below related solely to the new broadband public interest obligations, but must continue to submit information or certifications with respect to their provision of voice service.'' As the Bureau clarified in the *USF/ICC Clarification Order,* competitive ETCs that have been designated by the Commission are required to file information with respect to their provision of voice service during 2011, as previously required by § 54.209 of the Commission's rules. These competitive ETCs, who have been subject to these reporting obligations since Commission designation, are not subject to new reporting obligations, and we therefore do not find it unreasonable to continue to impose this reporting obligation. More generally, all competitive ETCs are required to offer voice service throughout the designated study area, and the Commission has an obligation to ensure these ETCs, who will continue to receive support until the completion of the phase down, are complying with this requirement. Moreover, many state-designated competitive ETCs are already subject to reporting obligations related to the provision of USF-supported voice service. For these reasons, we conclude it is reasonable to require competitive ETCs to comply with annual reporting obligations during their phase-down, and we deny the request for reconsideration. Those filings will be due on the same date as reports filed by other ETCs, as discussed more fully below.

C. Filing Deadline

9. In the *USF/ICC Transformation Order,* we established a filing deadline of April 1 for annual reports pursuant to new § 54.313, with reporting under a number of those subsections not beginning until 2013 or later. A number of petitioners and commenters argued that April 1 was an unrealistic deadline for the new financial reporting imposed by § 54.313(f)(2). These petitioners and

commenters argue that: (1) Many of the affected carriers have never been audited before; (2) some carriers do not close their books until the end of the first quarter; (3) many carriers are often still awaiting various financial documents on April 1; and (4) RUS Form 479 filings are not due until April 30. AT&T also argued that ETCs operating in multiple states would have difficulty meeting an April 1 deadline. Most of those petitioners argued that a filing deadline of July 1 or later would be reasonable. Additionally, USTelecom noted in its Petition that states do not need a six-month lead time in order to complete their section 254(e) annual certifications. On reconsideration, we conclude that moving the annual filing deadline three months later in the year would be appropriate. Because we are moving the filing deadline from April 1 to July 1, we decline to provide the automatic 60-day extension sought by the Alaska Rural Coalition.

10. We hereby revise the filing deadline under § 54.313 to July 1. We do not, however, change the years in which the various filings begin to be due. Many states do not require annual reporting until on or after July 1, and they still have sufficient time to provide the annual section 254(e) certifications to the Commission by October 1.

11. We also revise the filing deadline in § 54.1009(a) for annual reports required of recipients of Mobility Fund Phase I support. In the *USF/ICC Transformation Order,* the Commission established April 1 as the deadline for Mobility Fund Phase I recipients to submit their annual reports. In establishing the same filing deadline as that required for submission of annual reports pursuant to new § 54.313, the Commission aimed to minimize the administrative burden on Mobility Fund recipients that are subject to the new ETC annual reporting requirements under § 54.313 by permitting them to satisfy their Mobility Fund reporting requirements in a separate section of their report filed under § 54.313. Consequently, in order to maintain the uniform deadline for filing of these annual reports, we also move the Mobility Fund annual report filing deadline from April 1 to July 1.

12. We also revise the penalty deadlines in § 54.313(j). The Rural Associations argue in their petition that the penalties imposed by § 54.313(j) are ''far more onerous than similar prior rules that applied to individual high-cost support mechanisms because it reduces an ETC's entire USF and CAF support.'' In fact, however, the Commission merely extended existing rules that applied to federally designated ETCs to all ETCs. These mechanisms are necessary because they ''incent prompt filing of requisite certifications and information necessary to calculate support amounts * * * [and] to ensure that support is being used for the intended purposes.'' By moving the filing deadline from April 1 to July 1, carriers will have sufficient time to file their annual reports. ETCs that are unable to file their annual reports in a timely manner without cause will receive reduced levels of support commensurate with the lateness of their filings. Thus, a carrier that files late will not immediately lose all support. Rather, that support will be prorated for each quarter the filing is late. Those carriers that need more time can request a waiver, as needed, pursuant to the Commission's rules.

13. We also take this opportunity to clarify that federally designated ETCs should file their § 54.313 annual reports with the commissions of the states in which they operate and with the Tribal authorities, as appropriate. As the Commission noted in the *USF/ICC Transformation Order,* states are not required to file certifications with the Commission with respect to carriers that do not fall within their jurisdiction. However, consistent with the partnership between the Commission and the states to preserve and enhance universal service, and our recognition that states will continue to be the first place that consumers may contact regarding consumer protection issues, in the *Order* we encouraged states to bring to our attention issues and concerns about all carriers operating within their boundaries, including information regarding non-compliance with our rules by federally-designated ETCs. We also stated in the *Order* that we encourage Tribal governments, where appropriate, to report to the Commission any concerns about non-compliance with our rules by all recipients of support operating on Tribal lands. Ensuring that the relevant Tribal government has access to the annual reports of any ETC operating on Tribal lands is a critical component of the trust relationship with those Tribal governments.

D. Document Retention Period

14. In the *USF/ICC Transformation Order,* we imposed a 10-year document retention period on all ETCs receiving high-cost support. USTelecom and CenturyLink argued that we should reduce the new 10-year document retention period and reinstate the original 5-year retention period previously contained in § 54.202(e). We are not persuaded, as we conclude that a longer period of time is necessary for purposes of litigation under False Claims Act cases. Thus, we decline to revise the 10-year document retention period set forth in § 54.320. USTelecom further argued in its Petition that, should the Commission decline to reconsider the new ten-year retention period, the rule should apply only to ''records accumulated from the effective date of the rule going forward.'' While we agree that § 54.320 should apply prospectively only, we disagree with US Telecom on what constitutes prospective application. The new retention period shall apply to all covered documents in existence as of the effective date of § 54.320. The rule as so interpreted is a permissible, prospective application of a new rule because it does not affect or penalize past behavior but instead affects only conduct going forward.

III. Reporting of End User Rates

15. *Discussion.* We grant the request of the Independent Telephone and Telecommunications Alliance and the Rural Associations (Joint Petitioners) with regard to the sampling date for the rate filing, and also to permit mid-year updates to reflect changes to rates. However, we deny the Rural Associations' and Accipiter's petitions for reconsideration.

16. As discussed above, we are changing the date that ETCs must file their annual § 54.313 reports, including data required for the rate floor, from April 1 to July 1. Consistent with this broader change to § 54.313, we also change the sampling date set forth in § 54.313(h) from January 1 to June 1. The Commission's intent in specifying January 1 was to select a date relatively close to the annual filing deadline, but with the change of the annual filing deadline to July 1, we conclude that a six-month gap between the original sampling date of January 1 and the new reporting date of July 1 is too long. Thus, we change the sampling date to June 1. Moreover, this conforming rule change addresses Joint Petitioners' request that carriers be permitted additional time to implement rate changes to maintain their eligibility for support before reductions begin on July 1, 2012.

17. In addition, we agree that carriers should be permitted to file mid-year updates when their rates and/or associated fees increase in a way that would reduce or eliminate the amount of any associated support reductions. Permitting mid-year updates in such instances will ensure that only carriers with artificially low rates still in effect will face support reductions. As

discussed in the *USF/ICC Transformation Order,* the fund should not be used to subsidize local rates far below the national average; however, where carriers have raised their rates, it is appropriate for us to take that into account. Accordingly, we amend our rules to add an optional filing for carriers to report increases in their local service rates or applicable state fees. Specifically, such carriers may report their revised rates and fees, as of December 1, on January 2 of each year. This mid-year update will be optional for any carrier that has increased local service rates or applicable state fees and which, therefore, would have a smaller reduction in high-cost universal service support. If, for instance, a carrier reports rates and state fees as of June 1st that are below the applicable benchmark, but then its rates and/or fees increase on October 1st, it may report those increased rates and/or fees in its January 2nd update, so that USAC can modify the support reductions for the remainder of the year. If the rates and/or fees increase after the June 1st sampling date to a level above the applicable rate floor, such that the carrier no longer would be subject to any reduction due to the rate floor, it may notify USAC of those increased rates in the January 2nd filing. Carriers do not need to report these rates in subsequent annual filings, as long as they remain greater than or equal to the applicable benchmark for the rate floor. We also make a corresponding change in our rule to address situations where rates and/or fees are reduced after the June 1st annual sampling date. The mid-year update will be required for any carrier when local service rates and/or applicable state fees decrease after the June 1st sampling date, which would lead to an increased reduction in high-cost universal service support. The mid-year update is required only if the local service rate or state fee reduction results in a reportable rate that is below the rate floor and would therefore be required pursuant to the annual filing. USAC will use the updated local service rates and state fees to determine the support reduction beginning with January support payments and continue until the next rate floor filing. We note that collecting these mid-year updates will require additional approval from the Office of Management and Budget pursuant to the Paperwork Reduction Act. The mid-year update will not, therefore, take effect until the Commission has received such approval.

18. In addition, we make minor corrections to our rules to make clear that the residential local rate needs only to be reported to the extent that the sum of that rate, and state regulated fees as specified below, is below the effective rate floor, rather than requiring the reporting of all rates. To the extent the local rate plus relevant fees is above the relevant benchmark, there is no need for USAC to have this information in order to calculate any support reductions for lines that fall before the rate floor. We note, however, that all ETCs will be required to report voice and broadband price offerings, which could include rates above the rate floor benchmark, once the Bureau specifies the format for the pricing and service comparability survey and obtains PRA approval. We also note that USAC may collect additional data, subject to PRA approval, as necessary to validate the carriers' rate floor filings. We also clarify an inadvertent inconsistency that exists between the text of the Order and the text of the rules regarding which rates must be reported. We clarify that carriers are required to report all rates for residential local voice service that are under the specified rate floor, and not just rates that are denominated ''R–1'' rates or ''flat'' rates. The language used in paragraph 594 of the Order that carriers ''must report their flat rate for residential local service to USAC so that USAC can calculate reductions in support levels for those carriers with R1 rates below the specified rate floor'' therefore should have read ''must report their rates for residential local service to USAC so that USAC can calculate reductions in support levels for those carriers with local residential rates below the specified rate floor'' to be consistent with the adopted rule. It is necessary to apply the rate floor to all local residential service rates in order to avoid subsidization of rural rates that are significantly lower than the nationwide urban average, as intended by the Commission in adopting the rate floor.

19. In response to a petition for clarification from the Vermont Public Service Board, we clarify what constitutes the local rate for purposes of the rate floor. For local service provided pursuant to measured or message rate plans—in which customers do not receive unlimited local calling, but instead pay a per-minute or per-call charge for some or all calls—the local service rate reported by carriers should reflect the basic rate for local service plus the additional charges incurred for measured service, using the mean number of minutes or message units for all customers subscribing to that rate plan multiplied by the applicable rate per minute or message unit. Measured service plans typically, but not always, include some units for additional usage—whether the units are minutes or calls—beyond the basic plan. The local service rate to be reported for purposes of the rate floor should include additional charges for measured service only to the extent that the average number of units used by subscribers to that rate plan exceeds the number of units that are included in the plan. Where measured service plans have multiple rates for additional units, such as peak and off-peak rates, the calculation should reflect the average number of units that subscribers to the rate plan pay at each rate. Providers therefore should report a local rate for purposes of the rate floor that accurately reflects the amount that end users are actually paying for local service. Additionally, we clarify that the same methodology will apply to calculating the ''R1'' or ''1FR'' Rate Ceiling Component Charge that limits rate increases for end users associated with intercarrier compensation reforms. In particular, this methodology should be used by carriers that do not tariff a flat rate for residential local service that includes unlimited local calling, *i.e.,* the local service rate reported by such carriers should reflect the basic rate for local service of the measured or message rate plan, plus the additional charges incurred for measured service, using the mean number of minutes or message units for all customers subscribing to that rate plan multiplied by the applicable rate per minute or message unit. For customers subscribing to bundled service, carriers should report the local service rate as tariffed, if applicable, or as itemized on end-user bills. If a carrier neither tariffs nor itemizes the local voice service rate on bills for bundled services, it may report the rate of a similar stand-alone local voice service that it offers to consumers in that study area. Finally, we take this opportunity to clarify that the only fees that may be included for purposes of meeting the urban rate floor are state SLCs, state universal service fees, and mandatory extended area service charges. As the Commission stated in paragraph 238 of the *USF/ICC Transformation Order,* ''we will limit high-cost support where local end-user rates plus state regulated fees (specifically, state SLCs, state universal service fees, and mandatory extended area service charges) do not meet an urban rate floor representing the national average of local rates plus such state regulated fees.'' Accordingly, other

state fees, such as state 911 fees, may not be included.

20. We next deny the Rural Associations' request for reconsideration. Adopting a rate benchmark of two standard deviations below the nationwide average urban rate could result in a rate benchmark so low as to be meaningless. In any event, the Rural Associations have not provided any analysis to support its request, other than to note that the Commission has previously used a standard deviation analysis to set a different type of rate benchmark. In that case, the Commission used a standard deviation analysis as part of a framework to ensure that basic voice service rates in rural, high-cost areas served by non-rural carriers were not significantly higher than in urban areas. Here the Commission addressed a different issue—ensuring that federal universal service does not subsidize basic voice service rates that are artificially low. Adopting the Rural Associations' proposal would undermine this goal. Moreover, the *USF/ICC Transformation Order* states that a voice rate will be presumed to be reasonable if it falls within two standard deviations above the national average. Adopting the Rural Associations' proposal would require us to reconsider the broader determination that it is inappropriate for consumers across the country to subsidize the cost of service for some consumers that pay local service rates that are significantly lower than the national urban average, which we decline to do.

21. Similarly, we are unpersuaded by Accipiter's request to abandon the rate floor altogether. A state ratemaking authority may decide to exercise its discretionary authority in a manner that prevents a carrier from avoiding the support reduction associated with low rates, but that would not change the fact that the carrier has excessively low rates and may, in fact, be an indication that the carrier does not require additional subsidization to service the community. The local rate floor is not intended to address broadband rates or components within bundled rates other than voice service, and as such Accipiter's argument regarding its ability to offer bundled services is irrelevant; here, all we are looking at is the rate for local voice service. The Commission sought comment on issues relating to comparability of pricing for broadband in the *Further Notice,* 76 FR 78384, December 16, 2011. Finally, we decline to eliminate the rate floor based on Accipiter's unsupported suggestions of possible competitive harm. We are not persuaded that the appropriate response to unsubsidized competitors with low rates is to provide greater subsidies for the incumbent carrier in the competitive areas. Accordingly, we deny Accipiter's petition for reconsideration.

IV. Universal Service Support for Alaska

22. In this section, we address petitions for reconsideration filed by General Communications, Inc. (GCI) and by the Alaska Rural Coalition relating to several universal service issues in Alaska.

23. At the outset, however, we note that the State of Alaska has expressed concern with the Commission's use of the term ''Tribal lands'' as that term relates to areas of Alaska. In the *USF/ICC Transformation Order,* the Commission adopted a definition of ''Tribal lands'' for the purposes of high-cost support. Though it does not object to the definition of ''Tribal lands'' adopted by the Commission, the State of Alaska asserts that the use of the term ''Tribal lands'' might engender confusion in light of Alaska's unique circumstances, and it suggests that Commission should have used the term ''Tribal lands and Alaska Native Regions'' instead to reduce the possibility of such confusion. We decline to adopt the term proposed by the State of Alaska because we conclude that doing so could create more confusion than it might resolve, given the varying legal status of the other types of land included within the defined term Tribal lands. We clarify, however, that the use of the term Tribal lands in this context was not intended to alter the legal status of such lands for purposes unrelated to high-cost support.

24. In the *USF/ICC Transformation Order,* the Commission for the first time established ubiquitous mobile service as a universal service goal. To meet this goal, the Commission established a new support mechanism for mobile competitive ETCs within the CAF—the Mobility Fund—and provided for a five-year transition away from the support mechanism under which such carriers previously received support. For most competitive ETCs, that five-year period begins on July 1, 2012. However, for competitive ETCs serving remote areas in Alaska, the Commission delayed the beginning of the five-year transition period by two years and further provided that any phase-down of support would only commence following implementation of Mobility Fund Phase II, including its Tribal component. During that two-year period, the Commission established an interim cap for remote parts of Alaska, modeled on the state-by-state interim cap that was established in the *2008 Interim Cap Order,* 73 FR 37882, July 2, 2008.

A. GCI's Petition for Reconsideration

25. GCI requests that the Commission reconsider several aspects of how the *USF/ICC Transformation Order* rationalizes support for competitive ETCs serving remote parts of Alaska. GCI first asks that we reconsider the decision to transition support away from the identical support rule, under which competitive ETCs previously received universal service funding, to the Mobility Fund. GCI argues: ''Before commencing cuts to Remote Alaska support, the Commission should review the results of its Mobility Fund and Connect America Fund mechanisms, as well as the impact of capped support, to determine whether they, in fact, would provide sufficient support for Remote Alaska.''

26. While we appreciate the significant challenges that carriers serving Alaska face, we are not persuaded that we should reconsider the transition from the prior identical support system to the Mobility Fund for competitive ETCs serving remote portions of Alaska. In the *Order,* the Commission concluded that ''[i]t is clear that the current system [of support for competitive ETCs] does not efficiently serve the nation.'' In particular, the Commission noted, the identical support rule, under which support for competitive ETCs had long been provided, ''d[id] not provide appropriate levels of support for the efficient deployment of mobile services in areas that do not support a private business case for mobile voice and broadband.'' To the contrary, ''support levels generated by the identical support rule bear no relation to the efficient cost of providing mobile voice service in a particular geography,'' and, as a consequence, support in some areas was excessive while support in other areas may have been set too low. And so in some areas, multiple competitive ETCs, each with its own facilities, might receive support, while in others, no carrier would seek to serve the area. For these and the many other reasons set out in the *Order,* the Commission eliminated the identical support rule.

27. We see no persuasive reason why we should maintain the identical support rule in Alaska given our conclusion that it is an inefficient, poorly targeted mechanism for distributing support to competitive ETCs. Instead, we remain committed to transitioning to an efficient, incentive-based mechanism for ongoing support of mobile service. Because the Commission provided that support for carriers

serving remote areas of Alaska would not begin to be phased down until after Mobility Fund Phase II, including its Tribal component, was implemented, support levels for these areas in Alaska will generally remain unchanged until the replacement mechanism is in place. We will monitor the performance of all of the new support mechanisms, and, if circumstances warrant, we will adjust them as appropriate. But we are not persuaded now that they will fail to provide appropriate and sufficient support, and we therefore decline to modify the rules as requested.

28. In the alternative, GCI proposes that we make two changes to the interim cap for remote areas of Alaska and revise the baseline amount from which carriers will be phased down after the two-year delay. First, GCI asks that we modify the scope of the interim cap adopted for remote areas of Alaska in the *USF/ICC Transformation Order.* As adopted, the delayed phase-down applies only to carriers that previously had elected to take advantage of the Covered Locations exception to the 2008 interim cap, which permitted carriers to receive uncapped support (*i.e.,* to be exempt from the cap) if they certified that they served Tribal areas (*i.e.,* areas ''covered'' by the exception). GCI requests that we modify that rule so that all competitive ETCs serving remote Alaska would be included in the cap, and that the cap be expanded to account for the support such carriers previously received.

29. There is only one carrier that serves portions of remote areas of Alaska but did not take advantage of the Covered Locations exception: The competitive ETC Dobson Communications, which was acquired by AT&T several years ago. Under the old interim cap, carriers like AT&T that did not certify that they served Covered Locations received less support per line than carriers that did so certify. GCI proposes that we include AT&T in the remote Alaska mechanism, but continue to provide AT&T with the lower support amount per line that it received by virtue of not taking advantage of the Covered Location exception.

30. GCI argues that including AT&T in the delayed phase-down for remote Alaska will improve incentives for participating carriers to make investments in unserved and underserved areas in remote Alaska. GCI notes that adding AT&T to the remote Alaska mechanism would increase the total size of the cap for remote Alaska and would reduce each carrier's relative share of the total, which means that every time a carrier gains a customer (relative to other carriers), the operation of the cap would result in more of the incremental support associated with that customer ''coming from'' other carriers rather than the carrier itself. In addition, GCI claims that excluding AT&T from the remote Alaska mechanism would separately reduce AT&T's incentive to invest in those areas.

31. We are not persuaded that we should modify the rule as GCI requests. We note that GCI does not dispute that the cap mechanism provides incentives to make investments in unserved and underserved areas. Rather, GCI argues that its proposal would enhance those incentives. But, while GCI may be correct that, theoretically, a smaller pie (and larger relative shares) means less reward (and thus less incentive) for improving a carrier's position relative to its competitors, the opposite is true about the incentives to avoid losing relative position. That is, with a smaller pie (and larger shares), each carrier has a greater incentive to ensure that it does not lose customers relative to others (and, if others are gaining customers, to ensure that it gains customers proportionately). The incentive argument thus cuts both ways, and we do not find it compelling. Moreover, it is unclear how much the purported differences in incentives, over this time frame, would actually alter carriers' behavior.

32. Nor are we persuaded that AT&T should be added to the remote Alaska mechanism in order to preserve AT&T's incentives to invest. AT&T did not previously take advantage of the Covered Locations exception to the interim cap, which would have provided it with significantly more support. It is speculative that including AT&T in the remote Alaska mechanism would have any material effect on AT&T's plans for investment in Alaska or its conduct vis-à-vis other competitive ETCs in the state. Indeed, in this regard, we note that AT&T neither sought reconsideration of this aspect of the *Order* nor responded to GCI's proposal. Finally, we note that including AT&T in the cap mechanism would increase the total cost of the cap. We are not inclined to modify the mechanism to make it more costly when the benefit to doing so is as speculative as it would be in this case. For these reasons, we decline to alter the remote Alaska interim cap as GCI requests. GCI subsequently offered an alternative proposal to mitigate the budget impact of including AT&T in the delayed phase-down mechanism. Specifically, GCI proposed that AT&T's support be calculated under the delayed phase-down in the manner GCI previously proposed, and then reduced further by the reduction factor applicable to other carriers (*i.e.,* 20 percent in the first year, 40 percent in the second year, and so on). We decline to adopt this revised proposal as well. We note that it is hard to predict precisely what effect this change would have on the total cost of the delayed phase-down compared to our existing rules—it could increase the total cost if other carriers like GCI were to ''take away'' some of AT&T's support through the operation of the cap mechanism, albeit by less than including AT&T without phasing down AT&T's support. It would also add significant complexity to the calculation of support amounts. Moreover, nothing in GCI's revised proposal alters our assessment of GCI's arguments about the incentives carriers would face under its proposal

33. Second, GCI asks that we reconsider the calculation of the remote Alaska interim cap amount. As adopted, the rules provide that the interim cap shall be equal to the sum of support carriers subject to the delayed phase-down received in 2011. GCI suggests that, rather than using the amount of support disbursed in 2011 to set the cap, we should set it by multiplying the number of lines such carriers report on March 30, 2012 (reflecting lines served as of September 30, 2011) by the per-line support amounts in effect on December 31, 2011. GCI asserts that doing so would be more consistent with the purpose of the delayed phase-down mechanism, ''to 'preserve newly initiated services and facilitate additional investment in still unserved and underserved areas.''' GCI argues that ''[a]s written, the rules do not preserve funding for newly initiated services.'' As GCI explains, there is normally a delay of 10–12 months between the time service is provided and the time support is received for that service—*i.e.,* a delay of 10–12 months between the time a carrier adds a line and when the carrier gets support for that line. Accordingly, GCI asserts, ''the rules as written in effect cap Remote Alaska funding based on deployments as they existed more than a year ago, and fail to fully reflect the new deployments to 35 Remote Alaska villages that occurred in the spring and summer of 2010 and 2011.''

34. We are not persuaded that we should alter the interim cap baseline as GCI suggests. The criticisms of the identical support rule—that, among other things, there was no reason to believe it set support amounts at the right level—apply to its operation in Alaska, as elsewhere. In the *USF/ICC Transformation Order,* the Commission

did not conclude that, in order to preserve newly initiated services and facilitate investment, it was necessary to permit support levels to continue to rise to what carriers might have anticipated they might have received in the future under that rule. Rather, the Commission concluded that the appropriate means to preserve newly initiated services and to facilitate additional investment would be to provide a ''slower transition path'' from current support levels—to ensure that the aggregate amount of support to remote areas of Alaska was not reduced prematurely. The Commission's chosen approach, it explained, ''balance[d] the need to control the growth in support to competitive ETCs in uncapped areas and the need to provide a more gradual transition for the very remote and very high-cost areas in Alaska to reflect the special circumstances carriers and consumers face in those communities.'' GCI has not provided any evidence that would call the Commission's conclusions on these points into question. Accordingly, we decline to alter the rule in the manner proposed.

35. Finally, GCI requests that we revise the rules relating to the calculation of each carrier's baseline of support—the amount, at the end of the two-year delay, from which each carrier will phase down over the subsequent five years. As adopted, the rules provide that the baseline amount from which carriers will be phased down, for carriers subject to the delayed transition for remote Alaska, should be equal to the amount each such carrier received in 2013. GCI proposes that we modify this baseline in two respects. First, GCI proposes that the baseline not be set ''until the delayed phase-down for Remote Alaska actually begins, *i.e.,* the later of July 1, 2014, or the implementation of Mobility Fund Phase II, including its Tribal component.'' Second, GCI proposes, each carrier's baseline should be set ''based on the actual line count during the last complete month prior to the commencement of the support phase-down, *i.e.,* the latest possible line count would be used to calculate each per-study-area support amount.'' GCI argues that making these modifications to the rules would improve the incentives for carriers subject to the delayed phase-down to continue to invest throughout the delay period.

36. As GCI observes, the rule as adopted provides no incentive to deploy new services or add new lines after the fourth quarter of 2012 (while beginning to mute incentives to do so even earlier), because new lines added at that point will not be considered as part of the baseline support amount from which each carrier will be phased down. On the other hand, by setting each carrier's phase-down baseline using that carrier's actual line count from the month before the phase down begins, as GCI proposes, carriers' incentives would be maintained until approximately mid-2014, when the phase-down for such carriers is expected to begin. Yet adopting these proposals will have no budgetary impact, because total support distributed to competitive ETCs serving remote Alaska is limited by the overall cap amount. That is, the specific methodology used for calculating each carrier's phase-down baseline determines only each carrier's relative share of the total amount of support available under the cap.

37. We agree with GCI that its proposed revisions would be an improvement, because they would enhance the incentives for carriers to compete and to deploy facilities, without, as GCI notes, impacting the overall budget. For these reasons, we adopt GCI's proposed revisions and revise § 54.307(e) accordingly. Specifically, we alter the rule governing the calculation of support for carriers serving remote Alaska to provide that, rather than freezing support amounts at the end of 2013, support amounts will not be frozen under the delayed phase down mechanism until June 2014 or the last full month prior to the implementation of Mobility Fund Phase II, whichever is later; we also provide that the baseline amount itself shall be the annualized monthly support amount the carrier received for June 2014 or the last full month prior to the implementation of Mobility Fund Phase II, whichever is later. As stated previously, these changes will not affect the budget.

B. Alaska Rural Coalition's Petition

38. The Alaska Rural Coalition also asks us to reconsider and clarify aspects of the *USF/ICC Transformation Order.* While the Alaska Rural Coalition praises the decision to delay the phase-down of support for competitive ETCs serving remote areas of Alaska, it argues that rural incumbent carriers serving remote Alaska should also be afforded a two-year delay before their own support is reduced. The Alaska Rural Coalition states that the *Order* places ''a significant burden on small, rural companies serving remote areas'' and argues that ''the same reasons that the Commission articulated in its delay of the national five year transition period [for competitive ETCs serving remote Alaska] also warrant a more gradual adjustment of these reforms [affecting incumbent carriers] for the remote areas of Alaska in order to reflect the special circumstances for these remote, extremely high cost areas.''

39. We decline to adopt the Alaska Rural Coalition's suggestion. We disagree that the reasons that underlay the Commission's decision to delay the transition for competitive ETCs serving remote Alaska apply to incumbent carriers like the Coalition's members. The Commission adopted the delayed transition for competitive carriers in order to ensure that support would not be reduced until after the mechanism that will provide ongoing support targeted at such carriers—the Mobility Fund Phase II, including its Tribal component—is operational. As explained in the *Order,* the delayed phase-down would help ''preserve newly initiated services and facilitate additional investments in still unserved and underserved areas during the national transition to the Mobility Funds.'' In contrast, support mechanisms for rate-of-return carriers like the members of the Alaska Rural Coalition already exist. Moreover, although some rate-of-return carriers will receive less support based on the Commission's decision to place reasonable limits on expenses and to phase out mechanisms that were outdated and not operating as intended, other rate-of-return carriers will see little change in support, and yet others will see increases in support. Given this, we are not persuaded that a blanket delay of reforms to the existing mechanisms for incumbent carriers serving remote Alaska would serve the public interest.

40. The Alaska Rural Coalition also asks that we reconsider and relax certain broadband requirements that the Commission adopted in this proceeding. The *USF/ICC Transformation Order* imposed a general obligation that carriers receiving high-cost universal service support offer broadband with defined speed, latency, and capacity characteristics. The Commission set an initial broadband speed requirement of at least 4 megabits per second downstream and 1 megabit per second upstream The Commission recognized, however, that these requirements may prove impractical for carriers reliant on satellite backhaul facilities and therefore relaxed those obligations for carriers with no access to terrestrial backhaul, instead allowing 1 megabit per second downstream and 256 kilobit per second upstream speed requirement with no capacity or latency requirement. The Commission stated that the limited exception would not apply to carriers that do have access to terrestrial backhaul facilities but object to the cost

of that backhaul. In addition, the Commission provided rate-of-return carriers like the Alaska Rural Coalition's members with flexibility in meeting their buildout obligations, requiring them to provide broadband meeting the defined service characteristics on reasonable request, rather than ubiquitously by a date certain.

41. The Alaska Rural Coalition asks that we reconsider these requirements in two respects. First, the Alaska Rural Coalition objects to the requirements imposed on carriers reliant on satellite backhaul, claiming that it ''is not convinced that current satellite offerings can reliably meet'' the relaxed speed requirements for such carriers. The Coalition asks that ''further consideration * * * be given to the cost and realistic capacity of the satellites serving Alaska.'' But the Alaska Rural Coalition provides no information about satellite capacity limitations. Indeed, the Coalition does not even actually assert that meeting the relaxed requirements will, in fact, pose a challenge at all. On this record, we are not convinced that we should modify these requirements.

42. The Alaska Rural Coalition also asks that we clarify or reconsider the Commission's conclusion that a carrier may not take advantage of the relaxed broadband requirements if terrestrial backhaul is available to the carrier, but the carrier objects to the cost of obtaining it. For example, the Coalition explains, terrestrial backhaul may be newly present in some areas of Alaska, but carriers may not be able to get access to it at any price, while in other areas, the cost may ''far exceed[] the cost of purchasing satellite backhaul, an already cost-prohibitive solution.'' The Alaska Rural Coalition further observes that the buildout requirement applicable to rate-of-return carriers—that they deploy broadband ''on reasonable request''—provides some potential for flexibility, and it asks whether a request should be deemed unreasonable if the cost of purchasing terrestrial middle mile service to provide broadband service exceeds the high-cost support available for that line. ACS seconds the Coalition's concern, arguing that the Commission should clarify that backhaul is not ''available'' if it cannot be had ''at a price reasonably comparable to prices for backhaul links between urban areas.''

43. We appreciate the concerns raised by the Alaska Rural Coalition and ACS that it may not be cost-effective to serve certain customers due to the high cost of backhaul. Rather than granting a blanket exemption of the broadband obligations established for rate-of-return companies in the *USF/ICC Transformation Order,* we clarify, as the Alaska Rural Coalition requests, that our current rules provide sufficient flexibility to take into account any unique circumstances that may impact the ability of rate-of-return companies to extend broadband to their customers, including backhaul costs. As the Coalition notes, rate-of-return carriers are required to provide service meeting the specified characteristics on *reasonable* request, which, the Commission explained in the *Order,* was an obligation similar to the voice deployment obligation many of those carriers were already subject to. This obligation, enforced in the first instance by the relevant ETC-designating authority (generally the state), permits these entities to take into account backhaul costs or other unique circumstances that may make it cost-prohibitive to extend service to particular customers, in Alaska or any other area. We intend to carefully monitor developments in this regard and will consider making further clarifications or revisions if necessary.

44. We further conclude that it would be premature to modify the deployment requirements applicable to price cap carriers like ACS. Phase I of the Connect America Fund is designed to reach a significant number of relatively low-cost locations for which there is nevertheless no business case for deployment without support. Areas that may be more expensive to deploy broadband to, such as those served by satellite backhaul, will be addressed in ongoing proceedings to implement CAF Phase II, which will employ a model to determine the forward-looking cost of providing broadband to a service area on a granular basis. We conclude that ACS's concerns are more properly considered in the context of the effort to develop appropriate support levels in CAF Phase II, and we therefore decline, at this time, to modify our rule relating to backhaul availability.

45. The Alaska Rural Coalition also requests that we clarify that the new local rate benchmark, which reduces high-cost support to incumbent carriers that offer very low rates, applies to competitive ETCs in Alaska, or, if it does not already apply to such carriers, that we extend the rate benchmark to them. The Coalition argues that imposing the rate floor on all carriers receiving high-cost support is necessary to avoid creating a ''significant competitive disadvantage for anyone competing against'' a competitive ETC that is not subject to the rate floor.

46. We take this opportunity to clarify that the rate floor does not apply to competitive ETCs; it applies only to incumbent carriers. To eliminate any potential confusion, we modify § 54.318(c) of our rules accordingly. Further, we decline to extend the rate floor to competitive ETCs. Imposing a rate floor on competitive ETCs would be administratively complicated and time-consuming. Most competitive ETCs are mobile wireless carriers, not landline carriers, and because mobile wireless service is sold in different ways, it is not at all obvious how a rate floor could be quickly implemented for such carriers. We also do not find the Alaska Rural Coalition's competitive parity argument compelling in light of the changes that have already been made to support for competitive ETCs, both wireline and wireless. We note, for example, that existing rules provide that support for competitive ETCs will be phased down in most areas of the Nation. Even in remote areas of Alaska, funding under the identical support rule is being phased out, albeit on a delayed basis. Moreover, even in the near term, for carriers serving remote areas of Alaska competitive ETC *per-line* support will decrease as total lines increase as a result of the *USF/ICC Transformation Order's* cap on such support. The Alaska Rural Coalition focuses on one rule in isolation, in effect arguing that the Commission's reform is not competitively neutral. However, as we discussed in the *USF/ICC Transformation Order,* ''[t]he competitive neutrality principle does not require all competitors to be treated alike, but 'only prohibits the Commission from treating competitors differently in 'unfair' ways.' '' Given the other rule changes that competitive ETCs face that rate-of-return carriers do not, the rule as applied to incumbents is not unfair. For these reasons, we decline to alter the rules as requested by the Alaska Rural Coalition.

V. Intercarrier Compensation

A. Definition of Fiscal Year for Calculation of Eligible Recovery

47. *Discussion.* We deny the Rural Associations' request. The Rural Associations provide no explanation of why using the period July 1, 2010 through June 30, 2011 is more ''fully and fairly representative of prior-year operations.'' Given the significant and ongoing decline of minutes of use across the industry, with minutes-of-use declining at rates in excess of 10 percent per year, the Rural Associations' proposed time period would, by basing recovery on an earlier time period with correspondingly greater demand, likely permit greater recovery from consumers,

through the Access Recovery Charge (ARC) and CAF, than would use of the Fiscal Year definition adopted in the *USF/ICC Transformation Order.* Additionally, the Rural Associations have not quantified the impact of their proposed change on consumers or the budget for the CAF. We are likewise unpersuaded that using an earlier period would provide greater ''certainty and closure'' as the Rural Associations assert. Carriers currently are preparing their filings based upon the dates in the existing rules and changing them at this time would potentially disrupt that process. Accordingly, we decline to reconsider the fiscal year time period to be used for determining Eligible Recovery.

B. Use of Revenue Forecast

48. *Discussion.* The Rural Associations fail to demonstrate that the use of each study area's actual 2011 interstate revenue requirements would produce substantially more accurate baseline amounts. We believe that using projected settlements associated with 2011 annual interstate switched access tariff filings—filings which were deemed lawful, which established the charges paid by consumers, and which are based on historical costs—sufficiently protects the interests of such carriers.

49. Additionally, making carriers' actual 2011 interstate revenue requirement the basis of their recovery would create opportunity and incentive for carriers to manipulate their cost studies to increase their recovery. The actual interstate revenue requirements that the Rural Associations suggest we use had not been filed at the time the Order was adopted. Consequently, in preparing cost studies, carriers could adopt study procedures designed to include costs associated with one-time events, extraordinary depreciation, etc. that could improperly increase a carrier's Rate-of-Return Baseline—and thus its Eligible Recovery—for years to come. The Rural Associations cite ''review and verification by independent auditors, NECA review procedures, state regulators and other entities'' as sufficient to allay concerns that ''cost studies might be manipulated * * *.'' Given the very significant incentives that the rural carriers' proposed approach would create to increase costs—allowing them to in effect ''lock in'' higher recovery each year for at least the next several years based upon a single cost study—we are not persuaded that the processes the Rural Associations identify provide sufficiently robust protections compared to using tariff forecasts filed before the *USF/ICC Transformation Order* was adopted. Moreover, we note that any carrier may petition for a Total Cost and Earnings Review if it believes the allowed recovery is insufficient. The request for reconsideration on this matter is therefore denied.

VI. Procedural Matters

A. Paperwork Reduction Act

50. This Third Order on Reconsideration contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It has been or will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding.

B. Final Regulatory Flexibility Act Certification

51. The Regulatory Flexibility Act (RFA) requires that agencies prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

52. We hereby certify that the rule revisions in this Third Order on Reconsideration will not have a significant economic impact on a substantial number of small entities. This Order adopts several revisions to our rules. First, we modify certain of our reporting requirements. Second, we change the sampling date for reporting end user rates. Third, we create a mid-year rate filing update that is voluntary for carriers that increase rates and mandatory for carriers that reduce rates and that are otherwise subject to the annual rate filing requirement. Fourth, we alter our rules so that the capped support mechanism for competitive Eligible Telecommunications Carriers serving remote areas of Alaska will continue until the phase down of support begins, and we set each carrier's baseline amount for the phase down period as the carrier's support amount for the last full month prior to the beginning of the phase down. We conclude that these minor revisions, though they may possibly have some impact on some carriers, are not likely to have a significant economic impact on a substantial number of small entities. The Commission will send a copy of this Order, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Order (or a summary thereof) and certification will be published in the **Federal Register**.

C. Congressional Review Act

53. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

VII. Ordering Clauses

54. Accordingly, *It is ordered,* pursuant to the authority contained in sections 1, 2, 4(i), 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, and 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 1302, and §§ 1.1 and 1.429 of the Commission's rules, 47 CFR 1.1, 1.429, that this Third Order on Reconsideration *is adopted,* effective June 25, 2012, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the **Federal Register** of OMB approval.

55. *It is further ordered* that part 54 of the Commission's rules, 47 CFR part 54, is *amended* as set forth, and such rule amendment shall be effective June 25, 2012, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the **Federal Register** of OMB approval.

56. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and § 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration of Alaska Rural Coalition *is granted in part* to the extent described herein, and *is denied in part* to the extent described herein.

57. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and § 1.429 of

the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration of United States Telecom Association *is granted in part* to the extent described herein, and *is denied in part* to the extent described herein.

58. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and § 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration of Rock Hill Telephone Company d/b/a Comporium, Lancaster Telephone Company d/b/a Comporium, Fort Mill Telephone Company d/b/a Comporium, PBT Telecom, Inc. d/b/a Comporium, and Citizens Telephone Company d/b/a Comporium *is granted in part* to the extent described herein, and *is denied in part* to the extent described herein.

59. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and § and 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration of National Exchange Carrier Association, Inc., Organization for the Promotion and Advancement of Small Telecommunications Companies, and Western Telecommunications Alliance *is granted in part* to the extent described herein, and *is denied in part* to the extent described herein.

60. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and § 1.429 of the Commission's rules, 47 CFR 1.429, the January 23, 2012 Joint Petition for Clarification of the Independent Telephone and Telecommunications Alliance, National Exchange Carrier Association, National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, and Western Telecommunications Alliance *is granted.*

61. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and § 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration of Accipiter Communications Inc. *is denied in part.*

62. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and § 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration of General Communication, Inc., is *granted* to the extent provided herein and *denied* to the extent provided herein.

63. *It is further ordered* that, pursuant to the authority contained in § 1.3 of the Commission's rules, 47 CFR 1.3, the Petition for Waiver of Crocket Telephone Company Inc., Peoples Telephone Company, and West Tennessee Telephone Company, Inc., is *dismissed.*

64. *It is further ordered* that, pursuant to the authority contained in § 1.3 of the Commission's rules, 47 CFR 1.3, the Petition for Waiver of Shoreham Telephone Company is *dismissed.*

65. *It is further ordered* that the Commission *shall send* a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

66. *It is further ordered,* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

Subpart D—Universal Service Support for High Cost Areas

■ 2. Amend § 54.5 by revising the definition of ''Tribal lands'' to read as follows:

§ 54.5 Terms and definitions.

* * * * *

Tribal lands. For the purposes of high-cost support, ''Tribal lands'' include any federally recognized Indian tribe's reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) and Indian Allotments, *see* § 54.400(e), as well as Hawaiian Home Lands—areas held in trust for native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920, July 9, 1921, 42 Stat 108, et seq., as amended.

* * * * *

■ 3. Amend § 54.307 by:

■ a. Revising paragraph (e)(3)(iii);

■ b. Removing paragraph (e)(3)(iv)(A);

■ c. Redesignating paragraphs (e)(3)(iv)(B) through (F) as paragraphs (e)(3)(iv)(A) through (E); and

■ d. Revising paragraphs (e)(3)(v) introductory text, (e)(5), and (e)(7).

The revisions read as follows:

§ 54.307 Support to a company eligible telecommunications carrier.

* * * * *

(e) * * *

(3) * * *

(iii) *Baseline for Delayed Phase Down.* For purpose of the delayed phase down for remote areas in Alaska, the baseline amount for each competitive eligible telecommunications carrier subject to the delayed phase down shall be the annualized monthly support amount received for June 2014 or the last full month prior to the implementation of Mobility Fund Phase II, whichever is later.

* * * * *

(v) *Interim Support for Remote Areas in Alaska.* From January 1, 2012, until June 30, 2014 or the last full month prior to the implementation of Mobility Fund Phase II, whichever is later, competitive eligible telecommunications carriers subject to the delayed phase down for remote areas in Alaska shall continue to receive the support, as calculated by the Administrator, that each competitive telecommunications carrier would have received under the frozen per-line support amount as of December 31, 2011 capped at $3,000 per year, provided that the total amount of support for all such competitive eligible telecommunications carriers shall be capped pursuant to paragraph (e)(3)(v)(A) of this section.

* * * * *

(5) *Implementation of Mobility Fund Phase II Required.* In the event that the implementation of Mobility Fund Phase II has not occurred by June 30, 2014, competitive eligible telecommunications carriers will continue to receive support at the level described in paragraph (e)(2)(iv) of this section until Mobility Fund Phase II is implemented. In the event that Mobility Fund Phase II for Tribal lands is not implemented by June 30, 2014, competitive eligible telecommunications carriers serving Tribal lands shall continue to receive

support at the level described in paragraph (e)(2)(iii) of this section until Mobility Fund Phase II for Tribal lands is implemented, except that competitive eligible telecommunications carriers serving remote areas in Alaska and subject to paragraph (e)(3) of this section shall continue to receive support at the level described in paragraph (e)(3)(v) of this section.

* * * * *

(7) *Line Count Filings.* Competitive eligible telecommunications carriers, except those subject to the delayed phase down described in paragraph (e)(3) of this section, shall no longer be required to file line counts beginning January 1, 2012. Competitive eligible telecommunications carriers subject to the delayed phase down described in paragraph (e)(3) of this section shall no longer be required to file line counts beginning July 1, 2014, or the date after the first line count filing following the implementation of Mobility Fund Phase II, whichever is later.

■ 4. Amend § 54.313 by revising paragraphs (a)(10) and (11), (c)(1) through (4), (d), (e)(3) introductory text, (f)(1) introductory text, (h), and (j) to read as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

(a) * * *

(10) *Beginning July 1, 2013.* A letter certifying that the pricing of the company's voice services is no more than two standard deviations above the applicable national average urban rate for voice service, as specified in the most recent public notice issued by the Wireline Competition Bureau and Wireless Telecommunications Bureau; and

(11) *Beginning July 1, 2013.* The results of network performance tests pursuant to the methodology and in the format determined by the Wireline Competition Bureau, Wireless Telecommunications Bureau, and Office of Engineering and Technology and the information and data required by this paragraphs (a)(1) through (7) of this section separately broken out for both voice and broadband service.

* * * * *

(c) * * *

(1) *By July 1, 2013.* A certification that frozen high-cost support the company received in 2012 was used consistent with the goal of achieving universal availability of voice and broadband;

(2) *By July 1, 2014.* A certification that at least one-third of the frozen-high cost support the company received in 2013 was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor;

(3) *By July 1, 2015.* A certification that at least two-thirds of the frozen-high cost support the company received in 2014 was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor; and

(4) *By July 1, 2016 and in subsequent years.* A certification that all frozen-high cost support the company received in the previous year was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor.

(d) In addition to the information and certifications in paragraph (a) of this section, beginning July 1, 2013, price cap carriers receiving high-cost support to offset reductions in access charges shall provide a certification that the support received pursuant to § 54.304 in the prior calendar year was used to build and operate broadband-capable networks used to offer provider's own retail service in areas substantially unserved by an unsubsidized competitor.

(e) * * *

(3) *Beginning July 1, 2014.* A progress report on the company's five-year service quality plan pursuant to § 54.202(a), including the following information:

* * * * *

(f) * * *

(1) *Beginning July 1, 2014.* A progress report on its five-year service quality plan pursuant to § 54.202(a) that includes the following information:

* * * * *

(h) *Additional voice rate data.* (1) All incumbent local exchange carrier recipients of high-cost support must report all of their rates for residential local service for all portions of their service area, as well as state fees as defined pursuant to § 54.318(e), to the extent the sum of those rates and fees are below the rate floor as defined in § 54.318, and the number of lines for each rate specified. Carriers shall report lines and rates in effect as of June 1.

(2) In addition to the annual filing, local exchange carriers may file updates of their rates for residential local service, as well as state fees as defined pursuant to § 54.318(e), on January 2 of each year. If a local exchange carrier reduces its rates and the sum of the reduced rates and state fees are below the rate floor as defined in § 54.318, the local exchange carrier shall file such an update. For the update, carriers shall report lines and rates in effect as of December 1.

* * * * *

(j) *Filing deadlines.* In order for a recipient of high-cost support to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designation, it must submit the annual reporting information required by this section no later than July 1, 2012, except as otherwise specified in this section to begin in a subsequent year, and thereafter annually by July 1 of each year. Eligible telecommunications carriers that file their reports after the July 1 deadline shall receive support pursuant to the following schedule:

(1) Eligible telecommunication carriers that file no later than October 1 shall receive support for the second, third and fourth quarters of the subsequent year.

(2) Eligible telecommunication carriers that file no later than January 1 of the subsequent year shall receive support for the third and fourth quarters of the subsequent year.

(3) Eligible telecommunication carriers that file no later than April 1 of the subsequent year shall receive support for the fourth quarter of the subsequent year.

* * * * *

■ 5. Amend § 54.318 by revising paragraphs (a) through (c) and (f) and by adding paragraphs (h) and (i) to read as follows:

§ 54.318 High-cost support; limitations on high-cost support.

(a) Beginning July 1, 2012, each carrier receiving high-cost support in a study area under this subpart will receive the full amount of high-cost support it otherwise would be entitled to receive if its rates for residential local service plus state regulated fees as defined in paragraph (e) of this section exceed a local urban rate floor representing the national average of local urban rates plus state regulated fees under the schedule specified in paragraph (f) of this section.

(b) Carriers whose rates for residential local service plus state regulated fees offered for voice service are below the specified local urban rate floor under the schedule below plus state regulated fees shall have high-cost support reduced by an amount equal to the extent to which its rates for residential local service plus state regulated fees are below the local urban rate floor, multiplied by the number of lines for which it is receiving support.

(c) This rule will apply only to rate-of-return carriers as defined in § 54.5 and carriers subject to price cap regulation as that term is defined in § 61.3 of this chapter.

* * * * *

(f) *Schedule.* High-cost support will be limited where the rate for residential local service plus state regulated fees are below the local urban rate floor representing the national average of local urban rates plus state regulated fees under the schedule specified in this paragraph. To the extent end user rates plus state regulated fees are below local urban rate floors plus state regulated fees, appropriate reductions in high-cost support will be made by the Universal Service Administrative Company.

* * * * *

(h) If, due to changes in local service rates, a local exchange carrier makes an updated rate filing pursuant to section 54.313(h)(2), the Universal Service Administrative Company will update the support reduction applied pursuant to paragraphs (b) and (f) of this section.

(i) For the purposes of this section and the reporting of rates pursuant to paragraph 313(h), rates for residential local service provided pursuant to measured or message rate plans or as part of a bundle of services should be calculated as follows:

(1) Rates for measured or message service shall be calculated by adding the basic rate for local service plus the additional charges incurred for measured service, using the mean number of minutes or message units for all customers subscribing to that rate plan multiplied by the applicable rate per minute or message unit. The local service rate includes additional charges for measured service only to the extent that the average number of units used by subscribers to that rate plan exceeds the number of units that are included in the plan. Where measured service plans have multiple rates for additional units, such as peak and off-peak rates, the calculation should reflect the average number of units that subscribers to the rate plan pay at each rate.

(2) For bundled service, the residential local service rate is the local service rate as tariffed, if applicable, or as itemized on end-user bills. If a carrier neither tariffs nor itemizes the local voice service rate on bills for bundled services, the local service rate is the rate of a similar stand-alone local voice service that it offers to consumers in that study area.

■ 6. Amend § 54.1009 by revising paragraph (a) introductory text to read as follows:

§ 54.1009 Annual reports.

(a) A winning bidder authorized to receive Mobility Fund Phase I support shall submit an annual report no later than July 1 in each year for the five years after it was so authorized. Each annual report shall include the following, or reference the inclusion of the following in other reports filed with the Commission for the applicable year:

* * * * *

[FR Doc. 2012–12544 Filed 5–23–12; 8:45 a.m.]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 11–116 and 09–158; CC Docket No. 98–170; FCC 12–42]

Empowering Consumers To Prevent and Detect Billing for Unauthorized Charges (''Cramming''); Consumer Information and Disclosure; Truth-in-Billing Format

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) adopts rules to help consumers prevent and detect the placement of unauthorized charges on their telephone bills, an unlawful and fraudulent practice commonly referred to as ''cramming.'' The rules amend the Commission's existing Truth-in-Billing (TiB) rules, build on existing industry efforts to prevent cramming, and apply to wireline telephone carriers. The fact that the number of complaints received by the FCC, the Federal Trade Commission, and state agencies remains high and the widespread nature of cramming are strong evidence that current voluntary industry practices have been ineffective to prevent cramming and make clear the need for additional protection for consumers.

DATES: Effective May 24, 2012, except 47 CFR 64.2401 (a)(3) and (f), which contain modified information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a separate document in the **Federal Register** announcing the effective date of those sections.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Lynn Ratnavale, *Lynn.Ratnavale@fcc.gov* or (202) 418–1514, or Melissa Conway, *Melissa.Conway@fcc.gov* or (202) 418–2887, of the Consumer and Governmental Affairs Bureau. For additional information concerning the Paperwork Reduction Act information collection requirements contained in document FCC 12–42, contact Cathy Williams, Federal Communications Commission, at (202) 418–2918, or via email *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order (*R&O*), FCC 12–42, adopted on April 27, 2012 and released on April 27, 2012, in CG Docket Nos. 11–116 and 09–158, and CC Docket No. 98–170. The *R&O* adopts some of the rules proposed in the Commission's Notice of Proposed Rulemaking (*NPRM*), FCC 11–106; published at 76 FR 52625, August 23, 2011. In the *NPRM,* the Commission sought comment on measures to address cramming. Specifically, the Commission proposed that wireline telephone companies disclose to consumers information about blocking of third-party charges and place third-party charges in a separate bill section from all telephone company charges. The Commission further proposed that wireline and wireless telephone companies, on their bills and on their Web sites, notify subscribers that they can file complaints with the Commission, provide Commission contact information for filing complaints, and provide a link to the Commission's complaint Web site on their Web sites. Simultaneously with the *R&O,* the Commission also issued a Further Notice of Proposed Rulemaking in CG Docket Nos. 11–116 and 09–158, and CC Docket No. 98–170. The full text of the *R&O* and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone: (202) 488–5300, fax: (202) 488–5563, or Internet: *www.bcpiweb.com.* This document can also be downloaded in Word or Portable Document Format (PDF) at *http://www.fcc.gov/guides/cramming-unauthorized-misleading-or-deceptive-charges-placed-your-telephone-bill.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an

email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Final Paperwork Reduction Act of 1995 Analysis

The *R&O* contains modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public to comment on the information collection requirements contained in the *R&O* as required by the PRA of 1995, Public Law 104–13 in a separate notice that will be published in the **Federal Register**. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4), the Commission previously sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. In this present document, the Commission has assessed the potential effects of the various policy changes with regard to information collection burdens on small business concerns, and finds that these requirements will benefit many companies with fewer than 25 employees because they help address cramming without requiring a specific format for new disclosures or bill changes. In addition, the Commission has described the impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis.

Synopsis

1. In the *R&O,* the Commission adopts rules requiring: (1) Wireline telephone carriers that currently offer blocking of third-party charges to clearly and conspicuously notify consumers of this option on their bills, Web sites, and at the point of sale; (2) wireline telephone carriers that place on their telephone bills charges from third parties to place non-carrier third-party charges in a distinct bill section separate from all carrier charges; and (3) wireline telephone carriers that place on their telephone bills charges from third parties to provide separate subtotals for carrier and non-carrier charges. These rules reflect an important step beyond the existing TiB rules by requiring additional clear and conspicuous disclosures and by requiring clearer and distinct separation of carrier and non-carrier charges.

Rules To Prevent Cramming From Happening

2. The Commission adopts a rule that wireline carriers clearly and conspicuously notify—at the point of sale, on each bill, and on their Web sites—consumers of blocking options they offer. There is significant record support for this requirement. State and public interest commenters generally support more consumer disclosure and education, but question whether disclosure requirements alone are the most effective means to combat cramming. Carriers urge the Commission not to adopt any sort of disclosure requirement. The Commission disagrees with the carriers that generally oppose clear and conspicuous disclosure of existing blocking options, but affords carriers the flexibility to implement the requirement in the manner that best accomplishes the goal of the rule within the context of each carrier's individual Web site, bill, and point-of-sale scripts. This flexibility should enable carriers to avoid unnecessary costs while providing effective disclosures.

Rules To Help Consumers Detect Cramming After It Happens

3. The Commission adopts a rule that wireline carriers that place on their telephone bills charges from third parties for non-telecommunications services must place those charges in a distinct section of the bill separate from carrier charges. Carriers also must clearly and conspicuously identify and disclose separate subtotals for charges from carriers and from non-carrier third parties on the payment page of bills. For consumers who do not receive a paper bill, subtotals must be clearly and conspicuously displayed in an equivalent location and in any bill total that is provided to the consumer before the consumer has the opportunity to access an electronic version of the bill, such as in a transmittal email message, on a payment portal, or on a Web page. The Commission believes that these requirements are critical to enabling consumers to detect the most common types of unauthorized charges on their telephone bills. Importantly, the rule does not prohibit carriers from using the same basic format for all third-party charges, provided the format otherwise complies with Commission rules. Although a carrier's compliance with the rule will be determined on a case-by-case basis, a carrier might seek to comply by, for example, designating ''Part A'' of its bill for carrier charges and ''Part B'' for non-carrier charges. Similarly, a carrier may prefer ''Part A'' for its own charges, ''Part B'' for third-party carrier charges, and ''Part C'' for non-carrier third-party charges. With clear and conspicuous labeling of each section of the bill, such formats likely would comply with the Commission's requirements. The Commission does not mandate any specific format and carriers have flexibility to develop their own solutions. This rule does not change carrier billing for bundled services. This rule is an incremental step forward from the status quo where many carriers already separate carrier and non-carrier charges on their bills, but may not place the non-carrier third-party charges in a distinct bill section or otherwise clearly and conspicuously differentiate between carrier and non-carrier charges.

Implementation

4. It likely will take carriers longer to make changes to their billing systems than to provide the required disclosures on Web sites and at points of sale. Given this and the time it will take to obtain OMB approval of these rules, the Commission concludes that it is reasonable to require carriers to implement required changes to their billing systems within 60 days after publication in the **Federal Register** of a notice that OMB approval has been obtained, and to require carriers to implement required disclosures on their Web sites and at their points of sale within 15 days after such notice.

Legal Issues

5. *Communications Act:* Section 201(b) of the Act provides authority for it to adopt the new rules. This section requires that carrier practices ''for and in connection with'' telecommunications services must be just and reasonable. The new rules are an incremental outgrowth of the TiB rules that have been in place for more than a decade. Billing for telecommunications services is an integral part of the provision of telecommunications services.

First Amendment: The new rules do not unconstitutionally burden carrier speech. Untruthful or misleading commercial speech does not enjoy First Amendment protections. Nor does misleading speech or speech concerning unlawful activity raise First Amendment concerns. A substantial percentage of non-carrier third-party charges are unauthorized, and many of the unauthorized charges are fabricated or otherwise fraudulent in violation of state and federal laws.

6. Thus, it appears that a significant percentage of the speech that the rules target is not protected by the First

Amendment. Nevertheless, as the rules require speech in the form of mandatory disclosure and related format requirements, the First Amendment is implicated. The more lenient *Zauderer* (*Zauderer* v. *Office of Disciplinary Counsel,* 471 U.S. 626 (1985)) standard rather than the intermediate *Central Hudson* (*Central Hudson Gas and Electric Corp.* v. *Public Service Commission,* 447 U.S. 557 (1980)) standard applies to the rules adopted in the *R&O.* By giving consumers greater ability to identify and prevent fraudulent telephone charges, the rules are ''reasonably related'' to the government's interest of preventing cramming. Therefore, the rules easily satisfy the *Zauderer* standard. And, even under the three-part *Central Hudson* standard, the rules pass constitutional muster. Under the first part of the *Central Hudson* test, the Commission finds a substantial interest in assisting consumers in detecting and preventing placement of fraudulent, unauthorized charges on their telephone bills. With respect to the second prong, the rules advance the government's substantial interest.

7. Finally, the last prong is satisfied because the rules are proportionate to the substantial interest as an incremental, moderate approach to the prevention of cramming. The rules are narrowly crafted so that they are no more extensive than necessary to further the objective of enhancing the ability of consumers to detect and to prevent unauthorized charges on their telephone bills, and thus they satisfy the third prong of *Central Hudson.*

Final Regulatory Flexibility Analysis

8. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into FCC 11–106 Notice of Proposed Rulemaking (*NPRM*). The Commission sought written public comments on the proposals contained in the *NPRM,* including comments on the IRFA. None of the comments filed in this proceeding were specifically identified as comments addressing the IRFA; however, comments that address the impact of the proposed rules and policies on small entities are discussed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Proposed Rules

9. The record confirms that cramming is a significant and ongoing problem that has affected wireline consumers for over a decade, and drawn the notice of Congress, states, and other federal agencies. The substantial volume of wireline cramming complaints that the Commission, FTC, and states receive underscores the ineffectiveness of voluntary industry practices and highlights the need for additional safeguards. Although the Commission has addressed cramming as an unreasonable practice pursuant to section 201(b) of the Act, there had been no rules that specifically address this practice. In the *R&O,* the Commission adopts measures under the TiB rules to help consumers detect and prevent the placement of unauthorized charges on their telephone bills. The rules strike an appropriate balance between maximizing consumer protection and avoiding imposing undue burdens on carriers and billing aggregators. These rules avoid imposing the undue burden on consumers of eliminating third-party billing as a convenient means by which to receive charges. These rules avoid imposing undue burdens on small carriers that would raise their billing costs to an extent that would inhibit their businesses' ability to remain competitive and perhaps stifle innovation in the marketplace.

10. Blocking is a service many carriers and billing aggregators already make available to consumers; the new requirements will simply make the information about blocking more obvious to consumers when they sign up for telephone service. Requiring a separate section and separate totals for third-party non-carrier charges will also make it easier for a consumer to identify the services for which they are charged without requiring an entirely separate bill or the elimination of such charges from bills.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

11. There were no comments filed in direct response to the IRFA. Some commenters, however, raise issues and questions about the impact the proposed rules and policies would have on small entities.

12. *Point of Sale Disclosure of Blocking Options.* Although the state attorneys general, many state public utility commissions, and public interest commenters generally believe that the Commission should adopt additional measures to combat cramming, these groups support more disclosure to and the education of consumers as a general matter. Some carriers generally oppose clear and conspicuous disclosure of existing blocking options. They claim that required methods of disclosure would interfere with bill formatting flexibility, be unnecessary, or be costly. Nothing in the record convinces the Commission that it will be unduly burdensome or costly for carriers to implement this requirement—especially since carriers have the implementation flexibility they requested—given that that many or most carriers already offer blocking and notify consumers of blocking options when consumers dispute unauthorized charges. Thus, many carriers will be required only to expand their existing notification. Carriers are afforded the flexibility to implement this requirement in the manner that best accomplishes the goal of the rule within the context of each carrier's individual Web site, bill, and point-of-sale scripts. This flexibility should enable carriers to avoid unnecessary marketing and billing costs while still providing effective disclosures to their consumers.

13. *Separate Section of Bill for Non-Carrier Third-Party Charges.* The Commission adopts the requirement that where charges for service providers that are not carriers appear on a telephone bill, the charges must be placed in a distinct section of the bill separate from all carrier charges. There is significant support for greater separation of bill charges. While changes to bill format alone may not be enough to protect consumers, the requirement should make it easier for consumers to detect unauthorized charges on their bills that are described so as to appear to be for a telecommunications service, a common tactic used to hide unauthorized charges. The rules do not change anything with respect to billing for bundles.

14. *Separate Totals for Carrier and Non-Carrier Charges.* The Commission requires carriers to clearly and conspicuously disclose separate subtotals for charges from carriers and charges from non-carrier third parties on the payment page of their bills. For consumers who do not receive a paper bill, these subtotals must be clearly and conspicuously displayed in an equivalent location and in any bill total that is provided to the subscriber before the subscriber has the opportunity to access an electronic version of the bill, such as in a transmittal email message or on a Web page. One of the reasons consumers have difficulty detecting unauthorized charges is that these charges often are at or near the end of bills. By requiring separate subtotals on the payment page, which usually is the first page of a paper bill, the Commission addresses these concerns and guards against the unintended consequence that the requirement to place non-carrier third-party charges in

a distinct section of the bill could be implemented in a way that exacerbates problems associated with such charges being near the end of a bill. Requiring separate subtotals on the payment page also helps to alert consumers that their bill contains non-carrier third-party charges and that these charges are detailed in a distinct section of the bill. This requirement also should help consumers to be aware that their telephone bills may contain non-carrier charges.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

15. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the adopted rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

16. *Incumbent Local Exchange Carriers (''Incumbent LECs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the adopted rules and policies. Thus, under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small.

17. *Competitive Local Exchange Carriers (''Competitive LECs''), Competitive Access Providers (''CAPs''), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by the adopted rules.

18. *Billing Aggregators.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of billing aggregation services. The appropriate size standard under SBA rules is for the category Other Telecommunications Services and or Data Processing, Hosting and Related Services. Under those size standards, such a business is small if it has revenue of $25 million of less annually. Based upon the information provided by the commenting billing aggregators, the Commission estimates that the majority of billing aggregators are small entities that may be affected by adopted rules.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

19. The rules adopted in the *R&O* require wireline carriers (1) To notify subscribers clearly and conspicuously, at the point of sale, on each bill, and on their Web sites, of the option to block third-party charges from their telephone bills, if the carrier offers that option; (2) to place charges from non-carrier third-parties in a bill section separate from carrier charges; and (3) to clearly and conspicuously disclose separate subtotals for charges from carriers and charges from non-carrier third-parties on the payment page of their bills. These rules may necessitate that some common carriers make changes to their existing billing formats and/or disclosure materials.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

20. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

21. *Point of Sale Disclosure of Blocking Options.* In the *R&O,* the Commission adopts a requirement that carriers notify consumers of their options to block non-carrier third-party charges from their telephone bills. Although this requirement imposes some costs on small carriers, the requirement is limited to disclosure of already existing blocking options. This limitation significantly reduces the compliance burden. The Commission concludes that the costs imposed upon carriers are outweighed by the fact that consumers would be significantly more protected from crammed charges appearing on their telephone bills.

22. *Separate Section of Bill for Non-Carrier Third-Party Charges.* In the *R&O,* the Commission amends its rules to require that when service providers that are not carriers appear on a telephone bill, the charges must be

placed in a distinct section of the bill separate from all carrier charges. This rule places some burden on carriers, but the burden is mitigated because no specific format is mandated. Carriers have flexibility to develop their own solutions that comply with the rule as best works for their size and particular billing system, thereby reducing the burden. The rule will make it much easier for consumers to identify the charges on their bill that the record suggests are most likely to be crammed.

23. *Separate Totals for Carrier and Non-Carrier Charges.* The Commission requires carriers to clearly and conspicuously disclose separate subtotals for charges from carriers and charges from non-carrier third parties on the payment page of their bills. The separate totals requirement is part-and-parcel of the separate section for non-carrier third-party charges. The benefit to consumers in making their bills more clear and usable outweighs the burden on the carrier.

24. The Commission specifically identified two alternatives to the rules adopted in the *R&O* for the purpose of reducing the economic impact on small businesses. First, the Commission considered requiring all carriers to offer blocking. Second, the Commission considered requiring a specific bill format. However, the Commission rejected both of these alternatives because they are more costly to small businesses.

Congressional Review Act

25. The Commission will send a copy of the *R&O* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

26. Pursuant to the authority found in sections 1–2, 4, 201, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–152, 154, 201, 303(r), and 403, the *R&O is adopted*.

27. Pursuant to the authority found in sections 4, 201, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 201, 303(r), and 403, the Commission's rules *are adopted*.

28. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *R&O,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Subpart Y—Truth-in-Billing Requirements for Common Carriers

■ 1. The authority citation for part 64 is amended to read as follows:

Authority: 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, and 620 unless otherwise noted.

■ 2. Revise the heading for Subpart Y to read as follows:

Subpart Y—Truth-in-Billing Requirements for Common Carriers; Billing for Unauthorized Charges

■ 3. Amend § 64.2400 by revising paragraph (b) to read as follows:

§ 64.2400 Purpose and scope.

* * * * *

(b) These rules shall apply to all telecommunications common carriers and to all bills containing charges for intrastate or interstate services, except as follows:

(1) Sections 64.2401(a)(2), 64.2401(a)(3), 64.2401(c), and 64.2401(f) shall not apply to providers of Commercial Mobile Radio Service as defined in § 20.9 of this chapter, or to other providers of mobile service as defined in § 20.7 of this chapter, unless the Commission determines otherwise in a further rulemaking.

(2) Sections 64.2401(a)(3) and 64.2401(f) shall not apply to bills containing charges only for intrastate services.

* * * * *

■ 4. Amend § 64.2401 by redesignating paragraph (a)(3) as paragraph (a)(4), and add new paragraphs (a)(3) and (f) to read as follows:

§ 64.2401 Truth-in-Billing Requirements.

(a) * * *

(3) Carriers that place on their telephone bills charges from third parties for non-telecommunications services must place those charges in a distinct section of the bill separate from all carrier charges. Charges in each distinct section of the bill must be separately subtotaled. These separate subtotals for carrier and non-carrier charges also must be clearly and conspicuously displayed along with the bill total on the payment page of a paper bill or equivalent location on an electronic bill. For purposes of this subparagraph ''equivalent location on an electronic bill'' shall mean any location on an electronic bill where the bill total is displayed and any location where the bill total is displayed before the bill recipient accesses the complete electronic bill, such as in an electronic mail message notifying the bill recipient of the bill and an electronic link or notice on a Web site or electronic payment portal.

* * * * *

(f) *Blocking of third-party charges.* Carriers that offer subscribers the option to block third-party charges from appearing on telephone bills must clearly and conspicuously notify subscribers of this option at the point of sale, on each telephone bill, and on each carrier's Web site.

[FR Doc. 2012–12673 Filed 5–23–12; 8:45 a.m.]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383, 384, and 385

[Docket No. FMCSA–2007–27659]

Commercial Driver's License Testing and Commercial Learner's Permit Standards

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of regulatory guidance and applicability of ''tank vehicle'' definition.

SUMMARY: On May 9, 2011, FMCSA published a final rule titled ''Commercial Driver's License Testing and Commercial Learner's Permit Standards.'' Among other things, the rule revised the definition of ''tank vehicle.'' The change required additional drivers, primarily those transporting certain tanks temporarily attached to the commercial motor vehicle (CMV), to obtain a tank vehicle endorsement on their commercial driver's license (CDL). The Agency has since received numerous questions and requests for clarification. This notice responds to questions about the new definition and the compliance date for

drivers to obtain the tank vehicle endorsement.

DATES: *Effective date for the regulatory guidance:* May 24, 2012.

Compliance date for the May, 9, 2011 final rule: States must be in compliance with the requirements in subpart B of Part 384 (49 CFR part 384) by July 8, 2014.

FOR FURTHER INFORMATION CONTACT: Robert Redmond, Office of Safety Programs, Commercial Driver's License Division, telephone (202) 366–5014 or email *robert.redmond@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On April 9, 2008, FMCSA issued a notice of proposed rulemaking (NPRM) to amend the CDL knowledge and skills testing standards and establish new minimum Federal standards for States to issue the commercial learner's permit (CLP) (73 FR 19282). On May 9, 2011, FMCSA published the final rule, which made a CLP holder subject to virtually the same requirements as a CDL holder, including the same driver disqualification penalties (76 FR 26854). This final rule also implemented section 4019 of the Transportation Equity Act for the 21st Century (TEA–21), section 4122 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), and section 703 of the Security and Accountability For Every Port Act of 2006 (SAFE Port Act).

For many years, the definition of ''tank vehicle'' in 49 CFR 383.5 read:

> ''*Tank vehicle* means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicles include, but are not limited to, cargo tanks and portable tanks, as defined in part 171 of this title. However, this definition does not include portable tanks having a rated capacity under 1,000 gallons.''

The NPRM proposed to revise the definition to read:

> ''*Tank vehicle* means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank having an aggregate rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of 1,000 gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle.'' 73 FR 19301.

The final rule further revised the definition:

> ''*Tank vehicle* means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank *or tanks* having *an individual rated capacity of more than 119 gallons and* an aggregate rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of 1,000 gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle.'' (Emphasis added.) 76 FR 26878.

The change from the NPRM's definition (a single tank with an aggregate capacity of 1000 gallons) to that of the final rule (multiple tanks with an aggregate capacity of 1000 gallons) was made in response to comments to the rulemaking docket.

Applicability of the Tank Vehicle Definition to Intermediate Bulk Containers (IBCs)

The Dangerous Goods Advisory Council (DGAC) advised the Agency after publication of the final rule that the revised definition could have a dramatic impact on the number of drivers required to have a tank vehicle endorsement, especially if IBCs were considered tanks covered by the definition. An IBC is a container used for transport and storage of fluids and bulk materials. IBCs are generally cubic in form and, therefore, can transport more material in the same area than cylindrically shaped containers.

The DGAC noted that IBCs—which may have a capacity as high as 3,000 liters but more typically do not exceed 1,000 liters (264 gallons)—are commonly used to transport liquid hazardous materials and are subject to the Department of Transportation's hazardous materials regulations. These packages are frequently transported by less-than-truckload (LTL) carriers. DGAC and others have asked whether FMCSA intended IBCs to be considered tanks, as that term is used in the ''tank vehicle'' definition. If so, many drivers who had not previously held a tank vehicle endorsement would be required to get one.

FMCSA acknowledges the trucking industry's concerns. However, the Agency intended that the revised definition would cover IBCs secured as indicated by the definition. For example, the aggregate capacity of four or more 1,000-liter IBCs would exceed the 1,000 gallon threshold. Drivers for many LTL carriers will therefore need to obtain a tank vehicle endorsement for their CDLs in order to maintain operational flexibility and to qualify to transport the range of cargo they normally handle.

The Agency includes in this notice new regulatory guidance on this issue. It will be posted to the Agency's Web site with previously published regulatory guidance for the benefit of interested parties and publishing companies that reprint the Federal Motor Carrier Safety Regulations and guidance.

Load Securement

In response to other questions submitted to the Agency since the publication of the final rule on May 9, 2011, FMCSA confirms that the final rule covers IBCs that are attached to the vehicle, whether they are secured by bolts, straps, chains, or by blocking and bracing. The aggregate capacity of the tanks, not the details of their securement, determines the applicability of the rule. As noted above, the Agency includes in this notice new regulatory guidance which clarifies how the new tank vehicle definition covers IBCs, and in doing so emphasizes that the definition covers tanks that are permanently or temporarily attached to the vehicle.

American Trucking Associations (ATA) Petition for Rulemaking

On February 22, 2012, the ATA petitioned FMCSA to revise the tank vehicle definition. This notice and the regulatory guidance address, in part, some of the issues raised by the petition, including the applicability of the definition to IBCs, the transportation of IBCs manifested as empty or residue, and the transportation of empty storage tanks on flatbed vehicles. The Agency granted the ATA petition on March 30, 2012, and is committed to initiate notice-and-comment rulemaking that will seek input on the tank vehicle definition.

Compliance Date for the Tank Vehicle Definition Change

The effective date of the final rule was 60 days after publication, or July 8, 2011. While the compliance date for the State requirements under subpart B of 49 CFR part 384 is three years from the effective date of the rule, or July 8, 2014, the definition of tank vehicle is not in subpart B of part 384 and therefore is currently effective. States that adopt amendments to the Federal Motor Carrier Safety Regulations by reference, or complete their administrative adoption procedures relatively quickly, will be able to take action against a driver transporting materials in a tank vehicle without the proper endorsement before July 8, 2014.

FMCSA recommends that drivers affected by the tank vehicle definition obtain the needed endorsement as quickly as possible or investigate the

requirements of the States in which they travel so that they do not transport tanks in States already requiring the endorsement.

Commercial Driver's License Standards; Requirements and Penalties: Regulatory Guidance on 49 CFR 383.5, Definitions

Question: On May 9, 2011, FMCSA revised the definition of ''tank vehicle'' to include any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank or tanks having an individual rated capacity of more than 119 gallons and an aggregate rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. Does the new definition include loaded intermediate bulk containers (IBCs) or other tanks temporarily attached to a CMV?

Guidance: Yes. The new definition is intended to cover (1) a vehicle transporting an IBC or other tank used for any liquid or gaseous materials, with an individual rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or chassis; or (2) a vehicle used to transport multiple IBCs or other tanks having an individual rated capacity of more than 119 gallons and an aggregate rated capacity of 1,000 gallons or more that are permanently or temporarily attached to the vehicle or the chassis.

Question: On May 9, 2011, FMCSA revised the definition of ''tank vehicle.'' Does the new definition cover the transportation of empty intermediate bulk containers (IBCs) or other tanks, or empty storage tanks?

Guidance: No. The definition of ''tank vehicle'' does not cover the transportation of empty IBCs or other tanks when these containers are manifested as either empty or as residue on a bill of lading. Furthermore, the definition of tank vehicle does not cover the transportation of empty storage tanks that are not designed for transportation and have a rated capacity of 1,000 gallons or more, that are temporarily attached to a flatbed vehicle.

Issued on: May 16, 2012.

Anne S. Ferro,

Administrator.

[FR Doc. 2012–12692 Filed 5–23–12; 8:45 a.m.]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 395

Regulatory Guidance on Entering Data in an Automatic On-Board Recording Device While Commercial Motor Vehicle Is in Motion

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of regulatory guidance.

SUMMARY: FMCSA issues regulatory guidance to clarify that a co-driver may make entries to an automatic on-board recording device (AOBRD) while a commercial motor vehicle (CMV) is in motion. The prohibition in 49 CFR 395.15 against making entries to an AOBRD while the vehicle is in motion pertains only to the current driver. This guidance responds to recent inquiries from manufacturers of recording devices concerning updates to the duty status of co-drivers making the transition from the passenger seat to the sleeper berth or vice versa.

DATES: This regulatory guidance is effective May 24, 2012.

FOR FURTHER INFORMATION CONTACT: Thomas L. Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590. Email: *MCPSD@dot.gov*. Phone (202) 366–4325.

SUPPLEMENTARY INFORMATION:

Legal Basis

The Motor Carrier Act of 1935 provides that ''The Secretary of Transportation may prescribe requirements for (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation'' [49 U.S.C. 31502(b)].

The Motor Carrier Safety Act of 1984 (MCSA) confers on the Secretary the authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary to prescribe safety standards for CMVs. At a minimum, the regulations must ensure that (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely; and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operator [49 U.S.C. 31136(a)]. The Act also grants the Secretary broad power to ''prescribe recordkeeping and reporting requirements'' and to ''perform other acts the Secretary considers appropriate'' [49 U.S.C. 31133(a)(8) and (10)].

The Administrator of FMCSA has been delegated the authority to carry out the functions vested in the Secretary by the Motor Carrier Act of 1935 [49 CFR 1.73(l)] and the MCSA [§ 1.73(g)]. The provisions affected by this Notice of Regulatory Guidance are based on these statutes.

Reason for This Notice

This document adds regulatory guidance to clarify that a co-driver may make entries to an AOBRD while the CMV is in motion. The AOBRD regulation states that duty status may ''* * * be updated only when the commercial motor vehicle is at rest * * *'' [§ 395.15(i)(2)]. However, this restriction pertains only to the current driver. This guidance is provided in response to recent inquiries from manufacturers of recording devices concerning updates to the duty status of co-drivers making the transition from the passenger seat to the sleeper berth or vice versa.

This guidance will not contribute to distracted driving because the driver is still prohibited from making duty status entries in the AOBRD while driving.

For the reasons explained above, FMCSA issues new Regulatory Guidance, Question 4 to FMCSR § 395.15.

Part 395—Hours of Service of Drivers

Section 395.15, ''Automatic On-Board Recording Devices''

Question 4: Are automatic on-board recorders (AOBRDs) required to be designed and maintained to prevent team drivers in a non-driving duty status from making updates to their electronic record of duty status while the vehicle is in motion?

Guidance: No. AOBRDs are required only to prevent updates to the electronic record by the person who is actually driving while the vehicle is in motion. The on-board recorder must be capable of recording separately each driver's duty status when there is a multiple driver operation (49 CFR 395.15(i)(6)). Therefore, a system designed and maintained to handle multiple drivers would have a means for drivers to identify themselves and prevent the

current driver from making entries on the electronic record (except when registering the time the vehicle crosses a State boundary) until the vehicle is at rest. However, the system may allow a co-driver to log into the system at any time to make updates while the vehicle is in motion.

Issued on: May 11, 2012.

Anne S. Ferro,

Administrator.

[FR Doc. 2012–12693 Filed 5–23–12; 8:45 a.m.]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register
Vol. 77, No. 101
Thursday, May 24, 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.

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1005

[Docket No. CFPB–2012–0019]

RIN 3170–AA22

Electronic Fund Transfers (Regulation E)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Consumer Financial Protection Bureau (CFPB or the Bureau) is seeking comment, data, and information from the public about general purpose reloadable (GPR) prepaid cards (GPR cards). GPR cards are a prepaid financial product that have been increasing in popularity and that some consumers now use in a manner similar to a debit card that is linked to a traditional checking account. The Bureau is particularly interested in learning more about this product, including its costs, benefits, and risks to consumers. The Bureau intends to issue a proposal to extend the Regulation E protections to GPR cards. Your comments, in conjunction with other outreach and analysis, will help the Bureau better understand and evaluate any potential consumer protection issues raised by the current design, marketing, and use of this product. This advance notice of proposed rulemaking (ANPR) asks ten broad questions about GPR cards.

DATES: Comments on this ANPR must be received by July 23, 2012.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–20120019 or Regulatory Identification Number (RIN) 3170–AA22, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier in Lieu of Mail:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

Instructions: All submissions must include the agency name and docket number or RIN for this rulemaking. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by calling (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Dan Quan, Financial Analyst; Gregory Evans, Counsel; Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

A. General Purpose Reloadable Prepaid Cards

Prepaid cards are one of the fastest growing payment instruments in the United States. The prepaid card market consists of a wide variety of products. Some cards are ''closed-loop cards,'' which a consumer can use only at a specific merchant or group of merchants. Other cards are ''open-loop cards,'' which a consumer can use anywhere that accepts payment from a retail electronic payments network, such as Visa, MasterCard, American Express, or Discover. A prepaid card also may or may not be ''reloadable,'' meaning that the consumer, or other authorized party, can add money to the card after the card is issued.

This ANPR is seeking information about a specific type of prepaid card known as a general purpose reloadable (GPR) card (GPR card). According to projections by the Mercator Advisory Group, the total dollar value of amounts loaded onto GPR cards is expected to reach $167 billion in 2014, far in excess of the amount for 2007 of $12 billion.[1] A GPR card is issued for a set amount in exchange for payment made by a consumer. A GPR card is reloadable, meaning the consumer can add funds to the card. While this ANPR refers to a ''card,'' these devices may include other mechanisms, such as a key fob or cell phone application, that access a financial account. This ANPR does not seek information about ''closed loop'' cards, debit cards linked to a traditional checking account, non-reloadable cards, payroll cards, electronic benefit transfers (EBTs), or gift cards.

The GPR card market is one of the fastest growing segments of the overall prepaid market. According to the Mercator Advisory Group, the total dollar value of funds loaded to GPR cards is expected to grow at an average annual rate of 42% from 2010 to 2014.[2] Both depository and non-depository institutions participate in the GPR card market. Recently, the GPR card market has benefited from competition and economies of scale, leading many market participants to voluntarily provide some protections for consumers. The Bureau is gathering information about GPR cards, however, in order to ensure that consumers are protected regardless of the economic environment. Three factors in particular command greater attention to GPR cards: The growth of the market for GPR cards, consumer use, and the lack of comprehensive federal regulation. First, the number of GPR card users is growing rapidly, as the two largest issuers report that the number of active GPR cards more than doubled from nearly 3.4 million cards active as of the first quarter of 2009 to over 7.0 million active cards as of the first quarter of 2012.[3] Given this rapid growth and projections for continued growth, the

[1] Mercator Advisory Group, Prepaid Card Market Forecast, November 2011.

[2] *Id.*

[3] NetSpend Holdings, Inc. Form 10–Q, filed May 8, 2012 for the period ending March 31, 2012; NetSpend Holdings, Inc. Form S–1, filed July 15, 2010; Green Dot Corporation Form 10–Q, filed May 10, 2012 for the period ending March 31, 2012; Green Dot Corporation Form S–1/A, filed June 2, 2010.

need to evaluate and address potential risks to consumers will increase.

Second, some consumers may view and use GPR cards as an alternative to traditional checking accounts. This possibility is reflected in the increase in the number of GPR cards that consumers are loading through direct deposit. The second largest GPR card program manager reported that nearly 42% of its cardholders had direct deposit as of December 31, 2011, as compared to about 14% as of December 31, 2007.[4] The largest GPR card program manager reported a 69% year-over-year increase in the funds loaded via direct deposit during the fourth quarter of 2011.[5] The Bureau has also observed some GPR cards marketed as a substitute for a checking account. While consumers may be using GPR cards as a substitute for checking accounts, GPR cards do not carry the same protections given to checking accounts and electronic transactions involving checking accounts under federal law.

Third, the lack of a comprehensive federal regulatory regime may contribute to market distortions, misaligned incentives, or consumer confusion, as GPR card consumers may mistakenly assume that they possess rights enforceable under federal law. Unlike some other ''general-use prepaid cards'' such as payroll cards, Regulation E generally does not apply to GPR cards. Many GPR card market participants offer contractual protections similar to those provided in Regulation E for payroll cards, though such provisions may vary, and are subject to unilateral change.

Given the growth in the GPR card market and risk of consumer harm, the Bureau is seeking information to determine how best to implement consumer protection rules for this product. This information will help inform the Bureau as to the contours of any proposed rulemaking concerning GPR cards.

B. Current Regulation

The Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) (EFTA), enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. Historically, the EFTA was implemented in Regulation E of the Board of Governors of the Federal Reserve System (Board), 12 CFR part 205. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended a number of consumer financial protection laws, including the EFTA. Public Law 111–203,124 Stat. 1376 (2010). In addition to certain substantive amendments, the Dodd-Frank Act generally transferred the Board's rulemaking authority for the EFTA to the Bureau, effective July 21, 2011.[6] *See* sections 1061 and 1084 of the Dodd-Frank Act. Pursuant to the Dodd-Frank Act and EFTA, as amended, in December 2011 the Bureau republished Regulation E as an interim final rule, 12 CFR part 1005. 76 FR 81020 (Dec. 27, 2011).

Regulation E generally applies to electronic fund transfers authorizing a financial institution to debit or credit a consumer's account. Examples of types of transfers covered by the Act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse (ACH) transactions, telephone bill-payment plans, and remote banking service. Regulation E defines an ''account'' as ''a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes.'' 12 CFR 1005.2(b)(1).

In March 1994, the Board amended Regulation E to extend coverage to electronic benefit transfers (EBTs) issued by government agencies. 59 FR 10678 (March 7, 1994). The Board also amended Regulation E to deem a government agency an ''institution'' for purposes of the regulation. 12 CFR 1005.15(a). While EBTs became subject to most of the requirements of Regulation E, the Board exempted government agencies providing EBTs from the requirement of providing a periodic statement, so long as the agency makes the consumer's account balance readily available by telephone line and electronically, and the agency provides a written sixty day account history upon request. In response to the Work Opportunity Reconciliation Act of 1996, the Board published a final rule in August 1997 to exempt needs-tested benefits, those based on a person or family's income, from Regulation E. Public Law 104–193, 110 Stat. 2105 (1996); 62 FR 43467, 43468 (Aug. 14, 1997).

In August 2006, the Board published a final rule amending Regulation E to address payroll card accounts. 71 FR 51437 (Aug. 30, 2006); 12 CFR 1005.2(b)(2). The Board's final rule generally did not define employers and third-party service providers as ''financial institutions.'' The Board's final rule limited Regulation E's applicability to payroll card accounts to those established directly or indirectly through an employer. 12 CFR 1005.2(b)(2). While the Board received comments from consumer groups ''urg[ing] the Board to initiate a separate rulemaking to cover additional cards used to deliver important household funds, such as emergency benefit payments, income tax refunds, or loan proceeds, as well as other cards marketed or used as deposit account substitutes,'' the Board elected not to do so. The Board was of the view that GPR cards ''may only be used for limited purposes or on a short-term basis, and * * * may hold minimal funds'' and based on that premise the Board reasoned that ''[c]onsumers would derive little benefit from receiving full Regulation E protections for cards * * *, while the issuer's costs of compliance with Regulation E might be significant.'' 71 FR 51437, 51440–41. Thus, GPR cards were not included within the definition of ''account.''

On May 22, 2009, the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act) was signed into law. Public Law 111–24, 123 Stat. 1734 (2009). The CARD Act amended the EFTA to impose restrictions on a person's ability to impose dormancy fees, service fees, or expiration dates on gift cards, which might take the form of a gift certificate, store gift card, or what was termed a general-use prepaid card. In April 2010, the Board published a final rule to implement these provisions. 75 FR 16580 (Aug. 22, 2010). The Board defined the term ''general-use prepaid card,'' as a ''a card, code, or other device that is: (i) [I]ssued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a

[4] NetSpend Holdings, Inc. Form 10–K, filed February 4, 2012 for the period ending December 31, 2011, available at *http://files.shareholder.com/downloads/ABEA-56BIQV/1684506713x0xS1047469-12-1472/1496623/filing.pdf;* NetSpend Holdings, Inc. Form 10–K, filed March 2, 2011 for the period ending December 31, 2010, available at *http://files.shareholder.com/downloads/ABEA-56BIQV/1684506713x0xS1047469-11-1638/1496623/filing.pdf.*

[5] Green Dot Corporation, Q4 2011 Earnings Conference Call Supplemental Materials, January 26, 2012, available at *http://ir.greendot.com/phoenix.zhtml?c=235286&p=irol-EventDetails&EventId=4701441.*

[6] The Dodd-Frank Act generally excludes from this transfer of authority, subject to certain exceptions, any rulemaking authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. *See* Dodd-Frank Act, sections 1029, 1084(3). The Dodd-Frank Act also leaves to the Board rulemaking authority under section 920 of EFTA, which deals with debit card interchange fees, network arrangements, and routing restrictions. *See* Dodd-Frank Act, sections 1002(12)(C), 1084(3); 12 CFR part 235.

specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and (ii) [r]edeemable upon presentation at multiple, unaffiliated merchants for goods or services, or usable at automated teller machines.'' EFTA Section 915(a)(2)(A); 12 CFR 1005.20(a)(3)(i)–(ii). Because the CARD Act restrictions applied only to gift cards, however, the Board was careful to note that a general-use prepaid card did *not* include a device that was ''[r]eloadable and not marketed or labeled as a gift card or gift certificate.'' 12 CFR 1005.20(b)(2). Thus, the CARD Act restrictions regarding dormancy fees, service fees, or expiration dates on gift cards applied solely to general-purpose cards intended as gifts, not to those used more generally as replacement products for checking or deposit accounts. Moreover, the definition of ''account'' in Regulation E remained unaltered.

II. Request for Comment

The Bureau is seeking information from the public with respect to GPR cards, including their costs, benefits, and risks to consumers. These comments, in conjunction with other outreach and analysis, will help the Bureau better understand and evaluate potential consumer protection issues for this product. The Bureau will carefully consider the public's input as it formulates a proposal to regulate GPR cards. The Bureau's goals are to ensure that consistent minimum standards apply across similar consumer financial products, to allow consumers to easily compare financial products by ensuring transparent fee disclosure, and to allocate the risks of fraud or loss appropriately. In pursuing these goals, the Bureau will be mindful of avoiding any unnecessary burden on industry.

The Bureau has grouped questions on GPR cards into four broad categories: (A) Regulatory coverage of products by some or all of Regulation E, (B) product fees and disclosures, (C) product features, and (D) other information on GPR cards.

A. Regulatory Coverage of Products

1. How should the CFPB define GPR cards in the context of Regulation E? Should certain prepaid products not be included in this definition, such as cards that may serve a limited purpose (*e.g.,* university cards or health spending cards)? Why or why not?

2. Should only certain aspects of Regulation E be applied to GPR cards? For example, as Regulation E is currently applied to payroll cards, consumers are not guaranteed a periodic paper statement. If possible, please explain why a GPR card's use or structure makes any such modification appropriate. If the Bureau were to propose modifications to the Regulation E protections, what alternative protections or requirements, if any, should the Bureau propose?

B. Product Fees and Disclosures

3. What steps could the Bureau take to most effectively regulate these products to provide the consumer with transparent, useful, and timely fee disclosures? Should market participants be required to provide disclosure pre-sale, post-sale, or both?

4. How can the Bureau best enable a consumer to compare various GPR cards, or other payment products, that may have different fee structures or be offered through various distribution channels? Many GPR cards offer limited space to disclose contract terms. How should market participants convey the most important contractual terms to consumers to enable them to make educated purchase decisions?

5. Many, but not all, GPR card accounts are insured by Federal Deposit Insurance Corporation (FDIC) pass-through insurance (coverage that ''passes through'' the agent to the holders of the accounts).[7] Other GPR cards may provide alternative security mechanisms, but do not offer FDIC pass-through insurance. Should the existence, or lack thereof, of FDIC pass-through insurance associated with a GPR card be disclosed to the consumer? If so, how and when should the existence of FDIC pass-through insurance be disclosed?

C. Product Features

6. Currently, most GPR cards do not offer credit features, such as an ''overdraft'' feature that may be offered with a debit card that is linked to a traditional checking account. While an overdraft can occur in unusual circumstances, as when a small-item transaction is submitted for settlement without prior authorization or when a submitted transaction exceeds the authorized amount, generally speaking most GPR cardholders may not be able to withdraw or spend more than the funds loaded on the card. Nonetheless, some GPR card programs do allow cardholders to opt in to an overdraft program in which the issuer may authorize overdrafts and charges an overdraft transaction fee. The Bureau seeks public input on the costs, benefits, and consumer protection issues related to any credit features that may be offered by GPR cards.

7. Currently, most GPR cards do not offer a savings account associated with the card. The Bureau seeks public input on the costs, and benefits, and consumer protection issues related to savings features offered with GPR cards.

8. Currently some GPR cards include a feature that claims to offer consumers the opportunity to improve or build credit. Consumers generally need to opt in to this feature, which involves the reporting of certain information to credit reporting agencies. The Bureau seeks public input and data concerning the efficacy of credit reporting features on GPR cards in enabling consumers to improve or build credit. The Bureau also seeks information on whether regulatory provisions should address how such services are marketed to consumers.

D. Other Information on GPR Cards

9. Through what methods, and under what circumstances, do market participants communicate a change of contract terms, or other information, to cardholders? Are there inventory replacement cycles that drive the printing of cards to stock distribution outlets? Do market participants conduct periodic maintenance of systems during which updating compliance systems would impose less of a burden? If so, how often does this maintenance occur? Are there other issues with respect to the cost of regulatory compliance about which the CFPB should be aware?

10. Is there any other information relevant to GPR cards that will help inform the Bureau as it considers how best to address these products or other issues the Bureau should consider in this regard?

Dated: May 17, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012–12565 Filed 5–23–12; 8:45 am]

BILLING CODE 4810–AM–P

[7] *See* FDIC General Counsel's Opinion Number 8, 74 FR 67155, available at *http://www.fdic.gov/regulations/laws/rules/5500-500.html.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0217; Directorate Identifier 2009–NE–23–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Division Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to all Pratt & Whitney Division (Pratt & Whitney) PW4052, PW4056, PW4060, PW4062, PW4062A, PW4074, PW4077, PW4077D, PW4084D, PW4090, PW4090–3, PW4152, PW4156A, PW4158, PW4164, PW4168, PW4168A, PW4460, and PW4462 turbofan engines. The existing AD currently requires initial and repetitive fluorescent penetrant inspections (FPI) for cracks in the blade locking and loading slots of the high-pressure compressor (HPC) drum rotor disk assembly rear drum. Since we issued that AD, Pratt & Whitney has developed a redesigned HPC drum rotor disk assembly for certain affected engine models. This proposed AD would also require replacement of the 13th, 14th, and 15th stage HPC seals as an additional action and would add an optional terminating action to the repetitive inspection requirements by allowing replacement of the entire HPC drum rotor disk assembly. We are proposing this AD to prevent failure of the HPC drum rotor disk assembly, which could lead to an uncontained engine failure, and damage to the airplane.

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

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

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

For service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: 860–565–7700; fax: 860–565–1605. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: James Gray, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7742; fax: 781–238–7199; email: *james.e.gray@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2010–0217; Directorate Identifier 2009–NE–23–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On August 26, 2010, we issued AD 2010–18–13, Amendment 39–16427 (75 FR 55459, September 13, 2010), for all Pratt & Whitney PW4052, PW4056, PW4060, PW4062, PW4062A, PW4074, PW4077, PW4077D, PW4084D, PW4090, PW4090–3, PW4152, PW4156A, PW4158, PW4164, PW4168, PW4168A, PW4460, and PW4462 turbofan engines. That AD requires initial and repetitive FPI for cracks in the blade locking and loading slots of the HPC rear drum. That AD resulted from reports of cracked locking and loading slots in the HPC rear drum. We issued that AD to prevent failure of the HPC drum rotor disk assembly, which could lead to an uncontained engine failure, and damage to the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2010–18–13 (75 FR 55459, September 13, 2010), Pratt & Whitney has developed a redesigned HPC drum rotor disk assembly for PW4000–94″ and PW4000–100″ engine models. The redesign includes new 13th, 14th, and 15th stage HPC seals that lower the temperature in the loading and locking slots and decrease the likelihood of cracking. Based on the risk analysis, it was determined that installing the redesigned 13th, 14th, and 15th stage HPC seals on the original design HPC drum rotor disk assembly is an additional required action to maintain an acceptable level of safety and prevent cracking in the loading and locking slots while the redesigned HPC drum rotor disk assembly is being implemented. The option of installing a redesigned HPC drum rotor disk assembly is considered final corrective action to the repetitive inspections required by this AD.

Relevant Service Information

Prior to publishing AD 2010–18–13 (75 FR 55459, September 13, 2010), we reviewed the technical contents of Pratt & Whitney Service Bulletin (SB) No. PW4ENG 72–796, dated June 11, 2009, SB No. PW4G–100–72–186, Revision 1, dated September 2, 2004, and SB No. PW4G–112–72–264, Revision 2, dated February 23, 2010. Those three SBs describe procedures for performing a local FPI of the HPC rear drum blade locking and loading slots for cracks.

During the development of this proposed AD, we reviewed Pratt & Whitney SB No. PW4ENG 72–816, dated December 2, 2011, and SB No. PW4G–100–72–240, dated November 15, 2011. Those two SBs describe procedures for replacing the 13th, 14th, and 15th stage HPC seals in PW4000–94″ and PW4000–100″ engine models, with redesigned seals. We also reviewed Pratt & Whitney SB No. PW4ENG 72–817, dated December 7, 2011, and SB No. PW4G–100–72–241, dated November 15, 2011. Those two SBs describe procedures for replacing the HPC drum rotor disk assemblies in PW4000–94″ and PW4000–100″ engine models, with redesigned HPC drum rotor disk assemblies.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would retain all of the requirements of AD 2010–18–13 (75 FR 55459, September 13, 2010). This proposed AD would also require replacement of the 13th, 14th, and 15th stage HPC seals with redesigned seals, and would add an optional terminating action to the repetitive inspection requirements by allowing replacement of the HPC drum rotor disk assembly with a redesigned HPC drum rotor disk assembly.

Costs of Compliance

We estimate that this proposed AD would affect 911 engines installed on airplanes of U.S. registry. We also estimate that it would take about 1 work-hour per engine to perform an inspection using an average labor rate of $85 per work-hour. We estimate that there are 770 PW4000–94″ and PW4000–100″ engines that would require replacement of 13th, 14th, and 15th stage HPC seals, at a parts cost of $3,000 per engine. No additional labor is assumed when the replacement is done at piece-part exposure of the HPC drum rotor disk assembly. The replacement parts cost of the redesigned HPC drum rotor disk assembly is $630,000. Based on these figures, we estimate that the total cost of the proposed AD to U.S. operators will be $2,387,435.

Authority for this Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2010–18–13, Amendment 39–16427 (75 FR 55459, September 13, 2010), and adding the following new AD:

Pratt & Whitney Division: Docket No. FAA–2010–0217; Directorate Identifier 2009–NE–23–AD.

(a) Comments Due Date

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

(b) Affected ADs

This AD supersedes AD 2010–18–13, Amendment 39–16427 (75 FR 55459, September 13, 2010).

(c) Applicability

This AD applies to the following Pratt & Whitney Division (Pratt & Whitney) turbofan engines:

(1) PW4000–94″ engine models PW4052, PW4056, PW4060, PW4062, PW4062A, PW4152, PW4156A, PW4158, PW4460, and PW4462, including those models with any dash number suffix, with a high-pressure compressor (HPC) drum rotor disk assembly listed in Table 1 of this AD.

(2) PW4000–100″ engine models PW4164, PW4168, and PW4168A, with a HPC drum rotor disk assembly listed in Table 1 of this AD.

(3) PW4000–112″ engine models PW4074, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3, with a HPC drum rotor disk assembly listed in Table 1 of this AD.

TABLE 1—AFFECTED HPC DRUM ROTOR DISK ASSEMBLIES

Engine models	Affected HPC drum rotor disk assembly part numbers
PW4000–94″	50H936; 50H936–002; 53H923–01; 53H923–001; 53H973–01; 53H973–001; 54H803–01; 54H803–001; 54H803–002; 56H013–01; 56H013–001; 58H236–01.
PW4000–100″	53H973–01; 53H973–001; 54H803–01; 54H803–001; 54H803–002; 56H013–01; 56H013–001; 58H236–01.
PW4000–112″	55H722–01; 55H410–01; 57H010–01; 57H210–01; 57H610–01; 57H910–01.

(d) Unsafe Condition

This AD was prompted by Pratt & Whitney developing a redesigned HPC drum rotor disk assembly for certain affected engine models. We are issuing this AD to prevent failure of the HPC drum rotor disk assembly, which could lead to an uncontained engine failure, and damage to the airplane.

(e) Compliance

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

(f) Local Fluorescent Penetrant Inspection

(1) Perform a local fluorescent penetrant inspection for cracks in the HPC drum rotor disk assembly rear drum blade locking and loading slots of the specific stages of the HPC drum rotor disk assemblies from which any

of the blades are removed as specified in Table 2 of this AD.

TABLE 2—COMPLIANCE TIMES AND SERVICE BULLETINS BY ENGINE MODEL

For engine model	Inspect whenever—	To inspect, use—
PW4074, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3.	Any of the HPC 13thor 14thstage blades are removed during a shop visit.	Paragraphs 1.A. through 1.B. of the Accomplishment Instructions of PW4G–112–72–264, Revision 2, dated February 23, 2010.
PW4164, PW4168, and PW4168A	Any of the HPC 13th, 14th, or 15th stage blades are removed during a shop visit.	Paragraphs 1.A. through 1.C of the Accomplishment Instructions of PW4G–100–72–186, Revision 1, dated September 2, 2004.
PW4052, PW4056, PW4060, PW4062, PW4062A, PW4152, PW4156A, PW4158, PW4460, and PW4462.	Any of the HPC 13th, 14th, or 15th stage blades are removed during a shop visit.	Paragraphs 1.A. through 1.C. of the Accomplishment Instructions of PW4ENG 72–796, dated June 11, 2009.

(2) Remove from service any HPC drum rotor disk assembly rear drum found with a crack in any of the blade loading and locking slots.

(g) Replacement of 13th, 14th, and 15th HPC Seals

At the next piece-part exposure of the HPC drum rotor disk assembly after the effective date of this AD:

(1) Replace the 13th, 14th, and 15th stage HPC seals of engines listed in paragraph (c)(1) of this AD in accordance with the Accomplishment Instructions of Pratt & Whitney Service Bulletin (SB) No. PW4ENG 72–816, dated December 2, 2011.

(2) Replace the 13th, 14th, and 15th stage HPC seals of engines listed in paragraph (c)(2) of this AD in accordance with the Accomplishment Instructions of Pratt & Whitney SB No. PW4G–100–72–240, dated November 15, 2011.

(h) Optional Terminating Action

As optional terminating action to the repetitive inspection requirements of this AD:

(1) Replace the HPC drum rotor disk assembly of engines listed in paragraph (c)(1) of this AD with a redesigned HPC drum rotor disk assembly in accordance with the Accomplishment Instructions of Pratt & Whitney SB No. PW4ENG 72–817, dated December 7, 2011.

(2) Replace the HPC drum rotor disk assembly of engines listed in paragraph (c)(2) of this AD with a redesigned HPC drum rotor disk assembly in accordance with the Accomplishment Instructions of Pratt & Whitney SB No. PW4G–100–72–241, dated November 15, 2011.

(i) Definition

For the purpose of this AD, piece-part exposure means that the HPC drum rotor disk assembly is removed from the engine and completely disassembled.

(j) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. AMOCs approved previously in accordance with AD 2010–18–13, Amendment 39–16427 (75 FR 55459, September 13, 2010) are approved as AMOCs for the corresponding requirements in paragraph (f) of this AD.

(k) Related Information

(1) For more information about this AD, contact James Gray, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7742; fax: 781–238–7199; email: *james.e.gray@faa.gov.*

(2) For service information identified in this AD, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: 860–565–7700; fax: 860–565–1605. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on May 16, 2012.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–12414 Filed 5–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210–AB38

Target Date Disclosure

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Department of Labor's Employee Benefits Security Administration is reopening the period for public comment on proposed regulatory amendments relating to enhanced disclosure concerning target date or similar investments, originally proposed in a previously published document in the **Federal Register**.

DATES: Written comments on the proposed regulation should be received by the Department of Labor no later than July 9, 2012.

ADDRESSES: Written comments may be submitted to the addresses specified below. All comments will be made available to the public. Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines. Comments may be submitted anonymously. Persons submitting comments electronically are encouraged not to submit paper copies.

Comments identified by RIN 1210–AB38 may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: e-ORI@dol.gov.*
- *Mail or Hand Delivery:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, *Attention:* RIN 1210–AB38; Target Date Disclosure. Comments received by the Department of Labor may be posted without change to *http://www.regulations.gov* and *http://www.dol.gov/ebsa,* and will be made available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Kristen Zarenko, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Employee Benefits Security Administration of the Department of

Labor (Department) is reopening the period for public comment on proposed regulatory amendments to improve the information that is disclosed to participants and beneficiaries concerning investments in target date or similar funds (TDFs). In November 2010, the Department published a proposal to amend its qualified default investment alternative regulation (29 CFR 2550.404c–5) and participant-level disclosure regulation (29 CFR 2550.404a–5). The comment period for the proposal originally closed on January 14, 2011.[1] The proposal includes more specific disclosure requirements for TDFs, based on evidence that plan participants and beneficiaries would benefit from additional information concerning these investments. Specifically, the proposal would require an explanation of the TDF's asset allocation, how the asset allocation will change over time, and the point in time when the TDF will reach its most conservative asset allocation; including a chart, table, or other graphical representation that illustrates such change in asset allocation. The proposal also would require, among other things, information about the relevance of the TDF's ''target date;'' any assumptions about participants' and beneficiaries' contribution and withdrawal intentions following the target date; and a statement that TDFs do not guarantee adequate retirement income and that participants and beneficiaries may lose money by investing in the TDF, including losses near and following retirement. Additional background and other information are contained in the Supplementary Information published with the proposed amendments.[2]

Throughout this regulatory initiative, the Department has consulted with the Securities and Exchange Commission (Commission). The Department also specifically requested comment in its proposal on whether the final rule should incorporate any of the elements of a rule proposed by the Commission to address concerns regarding the potential for investor misunderstandings about TDFs.[3] In response, a large number of commenters strongly encouraged careful coordination with the Commission to avoid the potential cost and confusion (on the part of plan sponsors and participants and beneficiaries) that could result if the two agencies were to establish inconsistent disclosure requirements. Because of the relationship between the Department's and the Commission's regulatory proposals, the Department has continued to consult with Commission staff while working to issue a final rule.

As part of its regulatory process, the Commission recently engaged a consultant to conduct investor testing of comprehension and communication issues relating to TDFs. A report presenting the findings of this research on individual investors' understanding of TDFs and related fund advertisements is publicly available on the Commissions' Web site.[4] To provide interested parties an opportunity to comment on the results of this research and on its regulatory proposal, the Commission recently reopened the comment period for its proposal.[5]

As the results of this research also may be relevant to the Department's proposal, and in order to provide all persons who are interested in this research an opportunity to comment on the report, the Department is reopening the comment period before action is taken to finalize regulatory amendments. The Department invites additional comments on the TDF proposal in light of this new research. To avoid unnecessary duplication, the Department encourages parties who submitted comments to the Commission in response to their reopened comment period, and who consider their comments to be similarly relevant to the Department's review of the above-mentioned research, to submit (or reference) such comments, in response to this request, for inclusion in the Department's public record. Parties also may comment on any other matters that may have an effect on the Department's proposal. Accordingly, the Department is extending the comment period until July 9, 2012.

Signed at Washington, DC, this 15th day of May 2012.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2012–12386 Filed 5–23–12; 8:45 am]

BILLING CODE 4510–29–P

[1] *See* 75 FR 73987 (Nov. 30, 2010), proposing to amend the Department's qualified default investment alternative regulation, 72 FR 60452 (Oct. 24, 2007), and participant-level disclosure regulation, 75 FR 64910 (Oct. 20. 2010).

[2] *See id.*

[3] Commission Release Nos. 33–9126, 34–62300, IC–29301 (June 2010).

[4] *http://www.sec.gov/comments/s7-12-10/s71210-58.pdf.*

[5] *See* 77 FR 20749 (April 6, 2012).

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2012–0341]

RIN 1625–AA08

Special Local Regulations for Marine Events, Temporary Change of Dates for Recurring Marine Events in the Fifth Coast Guard District, Wrightsville Channel; Wrightsville Beach, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the enforcement period of one special local regulation for a recurring marine event in the Fifth Coast Guard District, specifically the ''Wilmington YMCA Triathlon'', locally known as the ''Beach 2 Battleship'', conducted on the waters of Wrightsville Channel near Wrightsville Beach, North Carolina. This Special Local Regulation is necessary to provide for the safety of life on navigable waters during the event, which has been rescheduled from the last Saturday in October or the first or second Saturday in November to the third Saturday in October. This action is intended to restrict vessel traffic on Wrightsville Channel during the swimming portion of this event.

DATES: Comments and related material must be received by the Coast Guard on or before June 25, 2012.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email BOSN3 Joseph M. Edge, Coast Guard Sector North Carolina, Coast Guard; telephone 252–247–4525, email

Joseph.M.Edge@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0341) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0341) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. You may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

Annually, since 2008, a regulation has been enforced for the ''Wilmington YMCA Triathlon'', locally known as the ''Beach 2 Battleship''. The event was recently added to 33 CFR 100.501 on January 19, 2012 in 77 FR 2629. Historically no comments or objections have been received for the regulation. Based on tidal predictions the sponsor has requested a change to the effective dates of this rule.

C. Basis and Purpose

The YMCA sponsors an annual Triathlon, ''Wilmington YMCA Triathlon'', locally known as the ''Beach 2 Battleship'', in the Wrightsville Beach area of North Carolina. The Triathlon consists of three events: A running portion, a bike-riding portion, and a swimming portion. The swimming portion of the Triathlon takes place in the waters adjacent to Wrightsville Beach. A special local regulation is effective annually to create a safety zone for the swimming portion of the Triathlon.

The regulation listing annual marine events within the Fifth Coast Guard District and corresponding dates is 33 CFR 100.501. The Table to § 100.501 identifies marine events by Captain of the Port zone. This particular marine event is listed in section (d.) line No. 4 of the table.

The current regulation described in section (d.) line No. 4 of the table indicates the Triathlon should take place this year on October 27, 2012, November 3, 2012 or November 10, 2012, this year. This regulation proposes to change the date for the event to take place on October 20, 2012 for this year only.

The swim portion of the Triathlon, scheduled to take place on Saturday October 20, 2012, will consist of two groups of 950 swimmers entering Banks Channel at the Blockade Runner Hotel and swimming northwest along Motts Channel to Seapath Marine. A fleet of spectator vessels are expected to gather near the event site to view the competition.

To provide for the safety of the participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during this event. The regulation at 33 CFR 100.501 would be enforced from 7 a.m. to 11 a.m. on October 20, 2012; vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

D. Discussion of Proposed Rule

The Coast Guard proposes to temporarily suspend the regulation listed at section (d.) line No. 4 in the Table to § 100.501 and insert this new temporary regulation at the Table to § 100.501 line No. 5 in order to reflect the change of date for this year's event. This change is needed to accommodate the change in date of the annual Triathlon. No other portion of the Table to § 100.501 or other provisions in § 100.501 shall be affected by this regulation.

This safety zone will restrict vessel movement on the specified waters of Wrightsville Channel, Wrightsville Beach, NC. The regulated area will be established in the interest of participant safety during the swim portion of the ''Wilmington YMCA Triathlon'' and will be enforced from 7 a.m. to 11 a.m. on October 20, 2012. The Coast Guard, at its discretion, when deemed safe will allow the passage of vessels. During the Marine Event no vessel will be allowed to transit the waterway unless the vessel is given permission from the Patrol Commander to transit the regulated segment of the waterway.

Any vessel transiting the regulated area must do so at a no-wake speed during the effective period. Nothing in this proposed rule negates the requirement to operate at a safe speed as provided in the Navigational Rules and Regulations.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this regulation prevents traffic from transiting waters of Wrightsville Channel during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect. Extensive advance notification will be made to the maritime community via marine information broadcast and local area newspapers so mariners can adjust their plans accordingly. Additionally, this rulemaking does not change the permanent regulated areas that have been published in 33 CFR 100.501, Table to § 100.501. Vessel traffic will be able to transit the regulated area before and after the races, when the Coast Guard Patrol Commander deems it is safe to do so. Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners of operators of vessels intending to transit Wrightsville Channel from 7 a.m. to 11 a.m. on October 20, 2012.

This rule will not have a significant economic impact on substantial number of small entities for the following reasons. The regulation will be enforced for only two hours. Although the regulated area will apply to Motts, Banks and Wrightsville Channels, traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through the regulated area, vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the swim course. The Patrol Commander will allow non-participating vessels to transit the event area once all swimmers are safely clear of navigation channels and vessel traffic areas. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the ''For Further Information Contact'' section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship

between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. This special local regulation is necessary to provide for the safety of the general public and event participants from potential hazards associated with movement of vessels near the event area. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

F. List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C 1233.

2. At § 100.501, in the Table to § 100.501, make the following amendments:

a. Under ''(d) Coast Guard Sector North Carolina-COTP Zone,'' suspend line 4.

b. Under ''(d) Coast Guard Sector North Carolina-COTP Zone,'' add temporary line 5 to read as follows:

§ 100.501–T05–0629 Special Local Regulations; Recurring Marine Event in the Fifth Coast Guard District.

* * * * *

(d.) Coast Guard Sector North Carolina—COTP Zone

Number	Date	Event	Sponsor	Location
*	*	*	*	* * *
5	October 20, 2012	Wilmington YMCA Triathlon.	Wilmington YMCA	The waters of, and adjacent to, Wrightsville Channel from Wrightsville Channel Day beacon 14 (LLNR 28040), located at 34°12′18″ N, longitude 077°48′10″ W, to Wrightsville Channel Day beacon 25 (LLNR 28080), located at 34°12′51″ N, longitude 77°48′53″ W.

* * * * *

Dated: May 10, 2012.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2012–12596 Filed 5–23–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2012–0025; A–1–FRL–9676–5]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of a revision to the Massachusetts State Implementation Plan (SIP) that addresses regional haze for the first planning period from 2008 through 2018. It was submitted by the Massachusetts Department of Environmental Protection (MassDEP) on December 30, 2011. EPA is also proposing to approve, through parallel processing, a supplemental Regional Haze submittal, Proposed Revisions to Massachusetts Regional Haze State Implementation Plan (SIP), which was proposed by the MassDEP for public comment on February 17, 2012. These submittals address the requirements of the Clean Air Act (CAA) and EPA's rules that require States to prevent any future, and remedy any existing, manmade impairment of visibility in mandatory Class I areas (also referred to as the ''regional haze program''). States are required to assure reasonable progress toward the national goal of

achieving natural visibility conditions in Class I areas.

DATES: Written comments must be received on or before June 25, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2012–0025 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: arnold.anne@epa.gov.*
3. *Fax:* (617) 918–0047.
4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2012–0025 Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (Mail Code OEP05–2), Boston, MA 02109–3912.
5. *Hand Delivery or Courier:* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (Mail Code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2012–0025. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov,* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the State submittal are also available for public inspection during normal business hours, by appointment at the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Anne McWilliams, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail Code OEP05–02), Boston, MA 02109–3912, telephone number (617) 918–1697, fax number (617) 918–0697, email *mcwilliams.anne@epa.gov.*

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Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. What is the background for EPA's proposed action?

A. The Regional Haze Problem

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles and their precursors (e.g., sulfur dioxide, nitrogen oxides, and in some cases, ammonia and volatile organic compounds). Fine particle precursors react in the atmosphere to form fine particulate matter ($PM_{2.5}$) (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust), which

also impair visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range in many Class I areas (i.e., national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the Western United States is 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without manmade air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. See 64 FR 35715 (July 1, 1999).

B. Background Information

In section 169A(a)(1) of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas [1] which impairment results from manmade air pollution.'' On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, i.e., ''reasonably attributable visibility impairment'' (RAVI). See 45 FR 80084 (Dec. 2, 1980). These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35714), the Regional Haze Rule. The Regional Haze Rule revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in Section II. The requirement to submit a regional haze SIP applies to all 50 States, the District of Columbia and the Virgin Islands. In 40 CFR 51.308(b), States are required to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007. On January 15, 2009, EPA found that 37 States, the District of Columbia and the U.S. Virgin Islands failed to submit this required implementation plan. See 74 FR 2392 (Jan. 15, 2009). In particular, EPA found that Massachusetts failed to submit a plan that met the requirements of 40 CFR 51.308. See 74 FR 2393. On December 30, 2011, the Division of Air Quality Control of the MassDEP submitted revisions to the Massachusetts SIP to address regional haze as required by 40 CFR 51.308. In addition, on May 2, 2012, MassDEP requested parallel processing of its February 17, 2012 Proposed Revision to Massachusetts Regional Haze SIP. EPA has reviewed Massachusetts' submittals and is proposing to find that they are consistent with the requirements of 40 CFR 51.308 as outlined in Section II.

C. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program will require long-term regional coordination among States, tribal governments and various federal agencies. As noted above, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to effectively address the problem of visibility impairment in Class I areas, States need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, EPA has encouraged the States and Tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their States and Tribes impact Class I areas across the country, and then pursued the development of regional strategies to reduce emissions of $PM_{2.5}$ and other pollutants leading to regional haze.

The Mid-Atlantic/Northeast Visibility Union (MANE–VU) RPO is a collaborative effort of State governments, tribal governments, and various federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the Northeastern United States. Member State and Tribal governments include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Penobscot Indian Nation, Rhode Island, and Vermont.

D. The Relationship of the Clean Air Interstate Rule and the Cross-State Air Pollution Rule to Regional Haze Requirements

The Clean Air Interstate Rule (CAIR) required some states to reduce emissions of SO_2 and NO_X that contribute to violations of the 1997 National Ambient Air Quality Standards (NAAQS) for $PM_{2.5}$ and ozone. See 70 FR 25162 (May 12, 2005). CAIR established emissions budgets for SO_2 and NO_X. On October 13, 2006, EPA's ''Regional Haze Regulations; Revisions to Provisions Governing Alternative to Source-Specific Best Available Retrofit Technology (BART) Determinations; Final Rule'' (hereinafter known as the ''Alternative to BART Rule'') was published in the **Federal Register**. See 71 FR 60612. This rule establishes that states participating in the CAIR program need not require BART for SO_2 and NO_X at BART-eligible electric generating units (EGUs). Many States relied on CAIR as an Alternative to BART for SO_2 and NO_X for their subject EGUs.

[1] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977 (42 U.S.C. 7472(a)). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value (44 FR 69122, November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions (42 U.S.C. 7472(a)). Although States and Tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager'' (FLM). (42 U.S.C. 7602(i)). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

CAIR was later found to be inconsistent with the requirements of the CAA and the rule was remanded to EPA. See *North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008). The court left CAIR in place until replaced by EPA with a rule consistent with its opinion. See *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008).

EPA promulgated the Cross-State Air Pollution Rule (CSAPR), to replace CAIR in 2011 (76 FR 48208, August 8, 2011). Massachusetts was subject to ozone season NO_X controls under the CAIR program. In its January 11, 2011, proposed Regional Haze SIP, MassDEP proposed to rely on emission reductions included in EPA's proposed Transport Rule as an Alternative to BART. However, Massachusetts is not subject to any of the requirements of CSAPR and therefore cannot rely on CSAPR as an Alternative to BART.

On December 30, 2011, the D.C. Circuit Court issued an order addressing the status of CSAPR and CAIR in response to motions filed by numerous parties seeking a stay of CSAPR pending judicial review. In that order, the D.C. Circuit stayed CSAPR pending the court's resolutions of the petitions for review of that rule in *EME Homer Generation, L.P.* v. *EPA* (No. 11–1302 and consolidated cases). The court also indicated that EPA is expected to continue to administer CAIR in the interim until the court rules on the petitions for review of CSAPR.

On February 17, 2012, MassDEP proposed an amended Alternative to BART. This strategy is discussed in further detail in Section III.B. MassDEP has also requested parallel processing of sections 8.10, 8.11, and 10.5, its revised BART and Long Term Strategy Chapters. Under this procedure, EPA prepared this action before the State's final adoption of this revision. Massachusetts has indicated that they plan to have a final adopted submittal by July 2012, prior to our final action on its Regional Haze SIP. After Massachusetts submits its final adopted revision, EPA will review the submittal to determine whether it differs from the proposed revision. If the final revision does differ from the proposed revision, EPA will determine whether these differences are significant. Based on EPA's determination regarding the significance of any changes in the final revision, EPA would then decide whether it is appropriate to prepare a final rule and describe the changes in the final rulemaking action, re-propose action based on the Massachusetts' final adopted revision, or take such other action as may be appropriate.

II. What are the requirements for Regional Haze SIPs?

A. The CAA and the Regional Haze Rule (RHR)

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and EPA's implementing regulations require States to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install Best Available Retrofit Technology (BART) controls for the purpose of eliminating or reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail below.

B. Determination of Baseline, Natural, and Current Visibility Conditions

The RHR establishes the deciview (dv) as the principal metric for measuring visibility. This visibility metric expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility is determined by measuring the visual range (or deciview), which is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky. The deciview is a useful measure for tracking progress in improving visibility, because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one deciview.[2]

The deciview is used in expressing Reasonable Progress Goals (RPGs) (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions, and tracking changes in visibility. The regional haze SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by manmade air pollution by reducing anthropogenic emissions that cause regional haze. The national goal is a return to natural conditions, i.e., manmade sources of air pollution would no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program and as part of the process for determining reasonable progress, States must calculate the degree of existing visibility impairment at each Class I area within the State at the time of each regional haze SIP submittal and periodically review progress every five years midway through each 10-year planning period. To do this, the RHR requires States to determine the degree of impairment (in deciviews) for the average of the 20 percent least impaired (''best'') and 20 percent most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, States must also develop an estimate of natural visibility conditions for the purposes of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. EPA has provided guidance to States regarding how to calculate baseline, natural and current visibility conditions in documents entitled, *Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule,* September 2003, (EPA–454/B–03–005) available at *www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf* (hereinafter referred to as ''EPA's 2003 Natural Visibility Guidance''), and *Guidance for Tracking Progress Under the Regional Haze Rule,* September 2003 (EPA–454/B–03–004), available at *www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf* (hereinafter referred to as ''EPA's 2003 Tracking Progress Guidance'').

For the first regional haze SIPs that were due by December 17, 2007, ''baseline visibility conditions'' were the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of impairment for the 20 percent least impaired days and 20 percent most impaired days at the time the regional haze program was established. Using monitoring data from 2000 through 2004, States are required to calculate the average degree of visibility impairment for each Class I area within the State, based on the average of annual values over the five year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the

[2] The preamble to the RHR provides additional details about the deciview. See 64 FR 35714, 35725 (July 1, 1999).

amount of progress made. In general, the 2000–2004 baseline period is considered the time from which improvement in visibility is measured.

C. Determination of Reasonable Progress Goals (RPGs)

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of regional haze SIPs from the States that establish RPGs for Class I areas for each (approximately) 10-year planning period. The RHR does not mandate specific milestones or rates of progress, but instead calls for States to establish goals that provide for ''reasonable progress'' toward achieving natural (i.e., ''background'') visibility conditions for their Class I areas. In setting RPGs, States must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period.

States have significant discretion in establishing RPGs, but are required to consider the following factors established in the CAA and in EPA's RHR: (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. See 40 CFR 51.308(d)(1)(i)(A). States have considerable flexibility in how they take these factors into consideration, as noted in EPA's July 1, 2007 memorandum from William L. Wehrum, Acting Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10, entitled *Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program* (p. 4–2, 5–1) (EPA's Reasonable Progress Guidance). In setting the RPGs, States must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to as the ''uniform rate of progress'' or the ''glide path'') and the emission reduction measures needed to achieve that rate of progress over the 10-year period of the SIP. The year 2064 represents a rate of progress which States are to use for analytical comparison to the amount of progress they expect to achieve. In setting RPGs, each State with one or more Class I areas (''Class I State'') must also consult with potentially ''contributing States,'' i.e., other nearby States with emission sources that may be contributing to visibility impairment at the Class I State's areas. See 40 CFR 51.308(d)(1)(iv).

D. Best Available Retrofit Technology (BART)

Section 169A of the CAA directs States to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, the CAA requires States to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing stationary sources built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' as determined by the State. CAA § 169A(b)(2), 42 U.S.C. 7491(b)(2).[3] States are directed to conduct BART determinations for such sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, States also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR part 51 (hereinafter referred to as the ''BART Guidelines'') to assist States in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. In making a BART applicability determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts (MW), a State must use the approach set forth in the BART Guidelines. A State is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources.

States must address all visibility impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are sulfur dioxide (SO_2), nitrogen oxides (NO_X), and particulate matter (PM). EPA has stated that States should use their best judgment in determining whether volatile organic compounds (VOCs), or ammonia (NH_3) and ammonia compounds impair visibility in Class I areas.

The RPOs provided air quality modeling to the States to help them in determining whether potential BART sources can be reasonably expected to cause or contribute to visibility impairment in a Class I area. Under the BART Guidelines, States may select an exemption threshold value for their BART modeling, below which a BART eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The State must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Any exemption threshold set by the State should not be higher than 0.5 deciviews. See 70 FR 39161 (July 6, 2005).

In their SIPs, States must identify potential BART sources, described as ''BART-eligible sources'' in the RHR, and document their BART control determination analyses. The term ''BART-eligible source'' used in the BART Guidelines means the collection of individual emission units at a facility that together comprises the BART-eligible source. See 70 FR 39161 (July 6, 2005). In making BART determinations, section 169A(g)(2) of the CAA requires that States consider the following factors: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance to be assigned to each factor. See 70 FR 39170 (July 6, 2005).

A regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a State has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the regional haze SIP, as required by CAA (section 169(g)(4)) and the RHR (40 CFR 51.308(e)(1)(iv)). In addition to what is required by the RHR, general SIP

[3] The set of ''major stationary sources'' potentially subject to BART are listed in CAA section 169A(g)(7).

requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source. States have the flexibility to choose the type of control measures they will use to meet the requirements of BART.

States may also provide an Alternative to BART demonstration. On October, 13, 2006, EPA finalized ''Regional Haze Regulations; Revisions to Provisions Governing Alternative to Source-Specific Best Available Retrofit Technology (BART) Determinations'' (71 FR 60612), an alternative emissions program that gives flexibility for states or tribal governments in ways to apply BART. The BART requirements would be satisfied if the alternative program meets or exceeds the visibility benefits resulting from BART. This approach has been approved by the D.C. Circuit. *See Center for Energy & Economic Development* v. *EPA,* 398 F.3d 653 (D.C. Cir. 2005); *Utility Air Regulatory Group* v. *EPA,* 471 F.3d 1333 (D.C. Cir. 2006).

E. Long-Term Strategy (LTS)

In 40 CFR 51.308(d)(3) of the RHR, States are required to include a LTS in their SIPs. The LTS is the compilation of all control measures a State will use to meet any applicable RPGs. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or affected by emissions from, the State. See 40 CFR 51.308(d)(3).

When a State's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another State, the RHR requires the impacted State to coordinate with the contributing States in order to develop coordinated emissions management strategies. See 40 CFR 51.308(d)(3)(i). In such cases, the contributing State must demonstrate that it has included in its SIP all measures necessary to obtain its share of the emission reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums for significant interstate consultation, but additional consultations between States may be required to sufficiently address interstate visibility issues. This is especially true where two States belong to different RPOs.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources. At a minimum, States must describe how each of the seven factors listed below is taken into account in developing their LTS: (1) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the State for these purposes; (6) enforceability of emissions limitations and control measures; (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. See 40 CFR 51.308(d)(3)(v).

F. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment (RAVI) LTS

As part of the RHR, EPA revised 40 CFR 51.306(c) regarding the LTS for RAVI to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the State's first plan addressing regional haze visibility impairment, which was due December 17, 2007, in accordance with 40 CFR 51.308(b) and (c). On or before this date, the State must revise its plan to provide for review and revision of a coordinated LTS for addressing reasonably attributable and regional haze visibility impairment, and the State must submit the first such coordinated LTS with its first regional haze SIP. Future coordinated LTS's, and periodic progress reports evaluating progress towards RPGs, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic reviews of a State's LTS must report on both regional haze and RAVI impairment and must be submitted to EPA as a SIP revision.

G. Monitoring Strategy and Other Implementation Plan Requirements

In 40 CFR 51.308(d)(4), the RHR requires a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I Federal areas within the State. The strategy must be coordinated with the monitoring strategy required in 40 CFR 51.305 for RAVI. Compliance with this requirement may be met through participation in the Interagency Monitoring of Protected Visual Environments (IMPROVE) network. The monitoring strategy is due with the first regional haze SIP, and it must be reviewed every five years. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met.

The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a State with mandatory Class I areas to determine the contribution of emissions from within the State to regional haze visibility impairment at Class I areas both within and outside the State;
- Procedures for using monitoring data and other information in a State with no mandatory Class I areas to determine the contribution of emissions from within the State to regional haze visibility impairment at Class I areas in other States;
- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the State, and where possible, in electronic format;
- Developing a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. A State must also make a commitment to update the inventory periodically; and
- Other elements, including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

Pursuant to 40 CFR 51.308(f) of the RHR, state control strategies must cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every 10 years thereafter. Periodic SIP revisions must meet the core requirements of 40 CFR 51.308(d) with the exception of BART. The BART provisions of 40 CFR 51.308(e), as noted above, apply only to the first implementation period. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

H. Consultation With States and Federal Land Managers (FLMs)

The RHR requires that States consult with FLMs before adopting and submitting their SIPs. See 40 CFR 51.308(i). States must provide FLMs an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on the SIP. This

consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Further, a State must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the State and FLMs regarding the State's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

III. What is EPA's analysis of Massachusetts' Regional Haze SIP submittal?

On December 30, 2011, the Division of Air Quality Control of the MassDEP submitted revisions to the Massachusetts SIP to address regional haze as required by 40 CFR 51.308. In addition, on May 2, 2012, MassDEP requested parallel processing of its February 17, 2012 Proposed Revision to Massachusetts Regional Haze SIP. EPA has reviewed Massachusetts' submittals and is proposing to find that they are consistent with the requirements of 40 CFR 51.308 as outlined in Section II. A detailed analysis follows.

Massachusetts is responsible for developing a regional haze SIP which addresses Massachusetts' impact on any nearby Class I areas. As Massachusetts has no Class I areas within its borders, Massachusetts is not required to address the following Regional Haze SIP elements: (a) Calculation of baseline and natural visibility conditions; (b) establishment of reasonable progress goals; (c) monitoring requirements; and (d) RAVI requirements.

A. Massachusetts' Impact on MANE–VU Class I Areas

Massachusetts is a member of the MANE–VU RPO. The MANE–VU RPO contains seven Class I areas in four States: Moosehorn Wilderness Area, Acadia National Park, and Roosevelt/Campobello International Park in Maine; Presidential Range/Dry River Wilderness Area and Great Gulf Wilderness Area in New Hampshire; Brigantine Wilderness Area in New Jersey; and Lye Brook Wilderness Area in Vermont.

Through source apportionment modeling, MANE–VU assisted States in determining their contribution to the visibility impairment of each Class I area in the MANE–VU region. Massachusetts and the other MANE–VU States adopted a weight-of-evidence approach which relied on several independent methods for assessing the contribution of different sources and geographic source regions to regional haze in the northeastern and mid-Atlantic portions of the United States. Details about each technique can be found in the Northeast States for Coordinated Air Use Management (NESCAUM) document *Contributions to Regional Haze in the Northeast and Mid-Atlantic United States,* August 2006 (hereinafter referred to as the ''Contribution Report'').[4]

The MANE–VU Class I States determined that any State contributing at least 2.0% of the total sulfate (the main contributor to visibility impairment in the Northeast, see Section III.C.3) observed on the 20 percent worst visibility days in 2002 was a contributor to visibility impairment at the Class I areas. Massachusetts emissions were found to contribute to the total annual average sulfate at the nearby Class I areas: Acadia National Park, Maine (10.11% of total sulfate); Moosehorn Wilderness Area, Maine and Roosevelt Campobello International Park (6.78% of total sulfate); Great Gulf Wilderness Area and Presidential Range Dry River, New Hampshire (3.11% of total sulfate); Lye Brook Wilderness Area (2.45% of total sulfate); and Brigantine Wilderness Area, New Jersey (2.73% of total sulfate). The impact of sulfate on visibility is discussed in greater detail below.

EPA is proposing to find that Massachusetts has adequately demonstrated that emissions from sources within the State cause or contribute to visibility impairment in nearby Class I Areas.

B. Best Available Retrofit Technology (BART)

According to 51.308(e), ''The State must submit an implementation plan containing emission limitations representing BART and schedules for compliance with BART for each BART-eligible source that may reasonably be anticipated to cause or contribute to any impairment of visibility in any Class I Federal area, unless the State demonstrates that an emissions trading program or other alternative will achieve greater reasonable progress toward natural visibility conditions.'' On October 13, 2006, EPA's ''Regional Haze Regulations; Revisions to Provisions Governing Alternative to Source-Specific Best Available Retrofit Technology (BART) Determinations; Final Rule'' (hereinafter known as the ''Alternative to BART Rule'') was published in the **Federal Register**. See 71 FR 60612. Massachusetts chose to demonstrate that programs already developed by the State provide greater progress in visibility improvement than source-by-source BART determinations. A demonstration that the alternative program will achieve greater reasonable progress than would have resulted from the installation and operation of BART at all sources subject to BART in the state must be based on the following:

(1) A list of all BART-eligible sources within the State.

(2) A list of all BART-eligible sources and all BART source categories covered by the alternative program.

(3) Determination of the BART benchmark. If the alternative program has been designed to meet a requirement other than BART, as in the case of Massachusetts, the State may determine the best system of continuous emission control technology and associated emission reductions for similar types of sources within a source category based on both source specific and category-wide information, as appropriate.

(4) An analysis of the projected emission reductions achieved through the alternative program.

(5) A determination based on a clear weight of evidence that the alternative program achieves greater reasonable progress than would be achieved through the installation and operation of BART at the covered sources.

As allowed by the Regional Haze Rule, Massachusetts opted to pursue source by source BART determinations for select sources and demonstrate an Alternative to BART for other sources.

1. Identification of All BART Eligible Sources

Determining BART-eligible sources is the first step in the BART process. BART-eligible sources in Massachusetts were identified in accordance with the methodology in Appendix Y of the Regional Haze Rule, *Guidelines for BART Determinations Under the Regional Haze Rule, Part II, How to Identify BART-Eligible Sources.* See 70 FR 39158. This guidance consists of the following criteria:

- The unit falls into one of the listed source categories;
- The unit was constructed or reconstructed between 1962 and 1977; and

[4] The August 2006 NESCAUM document *Contributions to Regional Haze in the Northeast and Mid-Atlantic United States* has been provided as part of the docket to this proposed rulemaking.

• The unit has the potential to emit over 250 tons per year of sulfur dioxide, nitrogen oxides, particulate matter, volatile organic compounds, or ammonia.

The BART Guidelines require States to address SO_2, NO_X, and particulate matter. States are allowed to use their best judgment in deciding whether VOC or ammonia emissions from a source are likely to have an impact on visibility in the area. The State of Massachusetts addressed SO_2, NO_X, and used particulate matter less than 10 microns in diameter (PM_{10}) as an indicator for particulate matter to identify BART eligible units, as the BART Guidelines require.

The identification of BART sources in Massachusetts was undertaken as part of a multi-State analysis conducted by the NESCAUM. NESCAUM worked with MassDEP licensing engineers to review all sources and determine their BART eligibility. MassDEP identified twenty-nine sources as BART-eligible. The Massachusetts BART eligible sources are listed in Table 1. Three of the sources are petroleum storage facilities (Exxon Mobile-Everett, Global Petroleum—Revere, and Gulf Oil—Chelsea) with VOC emissions.

Consistent with the BART Guidelines, the State of Massachusetts did not evaluate emissions of VOCs in BART determinations due to the lack of impact on visibility in the area due to anthropogenic sources. The majority of VOC emissions in Massachusetts are biogenic in nature. Therefore, the ability to further reduce total ambient VOC concentrations at Class I areas is limited. Point, area, and mobile sources of VOCs in Massachusetts are already comprehensively controlled as part of an ozone attainment and maintenance strategy.

Nor did Massachusetts evaluate ammonia. The overall ammonia inventory is very uncertain, but the amount of anthropogenic emissions at sources that were BART-eligible is relatively small, and no additional sources were identified that had greater than 250 tons per year ammonia and required a BART analysis.[5]

TABLE 1—BART ELIGIBLE SOURCES IN MASSACHUSETTS

Source, unit and location	Fuel	BART source category	2002 emissions (ton/yr)	Highest 2002 visibility impact (dv)[5]
Boston Generating—New Boston Unit 1	Distillate Oil	18.6 MW, EGU	SO_2: 1, NO_X: 170	0.04
Boston Generating—Mystic Unit 7*	Residual Oil	574 MW, EGU	SO_2: 3,727, NO_X: 805	1.02
Braintree Electric Unit 3	Distillate Oil Natural Gas.	76 MW, EGU	SO_2: 6 NO_X: 97	0.03
Dominion—Brayton Point Unit 1*	Coal	243 MW, EGU	SO_2: 9,254 NO_X: 2,513	3.82
Dominion—Brayton Point Unit 2*	Coal	240 MW, EGU	SO_2: 8,853 NO_X: 2,270	3.67
Dominion—Brayton Point Unit 3*	Coal	612 MW, EGU	SO_2: 19,450 NO_X: 7,335.	7.25
Dominion—Brayton Point Unit 4*	Residual Oil Natural Gas.	435 MW, EGU	SO_2: 2,037 NO_X: 552	0.73
Dominion—Salem Harbor Unit 4*	Residual Oil	433 MW, EGU	SO_2: 2,886 NO_X: 787	0.98
Harvard University—Blackstone Unit 11	Residual Oil Natural Gas.	83 MW, EGU	SO_2: 63 NO_X: 41	0.06
Harvard University—Blackstone Unit 12	Residual Oil Natural Gas.	83 MW, EGU	SO_2: 74 NO_X: 46	0.06
Mirant—Canal Station Unit 1	Residual Oil	560 MW, EGU	SO_2: 13,066 NO_X: 3,339.	4.43
Mirant—Canal Station Unit 2	Residual Oil	560 MW, EGU	SO_2: 8,948 NO_X: 2,260	3.26
Mirant Kendall LLC Unit 1	Residual Oil Natural Gas.	80 MW, EGU	SO_2: 18 NO_X: 172	0.06
Mirant Kendall LLC Unit 2	Residual Oil Natural Gas.	80 MW, EGU	SO_2: 36 NO_X: 96	0.04
Taunton Municipal Light Plant (TMLP)—Cleary Flood Unit 8.	Residual Oil	28 MW, EGU	SO_2: 37 NO_X: 15	0.01
Taunton Municipal Light Plant (TMLP)—Cleary Flood Unit 9.	Residual Oil	90 MW, EGU	SO_2: 55 NO_X: 163	0.07
Eastman Gelatin Units 1, 2, 3, and 4	Residual Oil Natural Gas.	ICI Boilers	SO_2: 5.2 NO_X: 51	0.03
General Electric Aircraft—Lynn Unit 3	Natural Gas Residual Oil.	ICI Boilers	SO_2: 425 NO_X: 213	0.24
Solutia	Natural Gas Residual Oil Coal.	ICI Boiler	NO_X: 16	0.003
Trigen—Kneeland St. Unit 3	Residual Oil Distillate Oil.	ICI Boiler	SO_2: 85 NO_X: 396	0.15
Wheelabrator Saugus Units 1	Mixed Waste	Municipal Incinerator	SO_2: 42 NO_X: 357	0.25
Wheelabrator Saugus Unit 2	Mixed Waste	Municipal Incinerator	SO_2: 42 NO_X: 364	0.25
Exxon Mobil—Everett All Processing Units		Petroleum Storage	N/A.	
Global Petroleum—Revere All Processing Units		Petroleum Storage	N/A.	
Gulf Oil—Chelsea All Processing Units		Petroleum Storage	N/A.	

*Located at a facility greater than 750 MW.

[5] Visibility Impact is measured in units of deciviews (dv). A deciview measures the incremental visibility change discernable by the human eye. The modeling to determine the visibility impact is discussed below.

2. Cap-Outs

BART applies to sources with the potential to emit 250 tons or more per year of any visibility impairing pollutant. (70 FR 39160). BART-eligible sources that adopt a federally enforceable permit limit to permanently limit emissions of visibility impairing pollutants to less than 250 tons per year (tpy) may thereby ''cap-out'' of BART. See 70 FR 39112. One Massachusetts source capped out of BART by taking such limits, General Electric-Lynn Unit 3. Actual emissions of visibility impairing pollutants from General Electric-Lynn Unit 3 are less than the 250 tons per year threshold. Pursuant to the request of the source, MassDEP has established a federally enforceable permit condition that limits the potential to emit (PTE) NO_X and SO_2 emissions from Unit 3 to less than 250 tons per year. This permit has been submitted as part of the Massachusetts SIP submittal (Appendix BB). The existing PM_{10} potential to emit is already below the 250 tpy threshold. As a result, Massachusetts concluded that this source is not BART eligible. If in the future, this source requests an increase in its PTE above the 250 tons per year threshold for a visibility impairing pollutant, it shall be subject to BART.

3. Identification of Sources Subject to BART

Massachusetts, working with MANE–VU, found that almost every MANE–VU state with BART-eligible sources contributes to visibility impairment at one or more Class I areas to a significant degree (See the MANE–VU Contribution Report). As a result, Massachusetts found that all BART eligible sources within Massachusetts are subject to BART.

According to Section III of the Guidelines, once the state has compiled its list of BART-eligible sources, it needs to determine whether to make BART determinations for all of the sources or to consider exempting some of them from BART because they may not reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area.

Based on the collective importance of BART sources, Massachusetts decided that no exemptions would be given for sources.[6]

4. Modeling To Demonstrate Source Visibility Impact

MANE–VU conducted modeling analyses of BART-eligible sources using the EPA approved air quality model, California Pollution Model (CALPUFF), in order to provide a regionally-consistent foundation for assessing the degree of visibility improvement which could result from the installation of BART controls.[7] While this modeling analysis differed slightly from the guidance, it was intended to provide a first-order estimate of the maximum visibility benefit that could be achieved by eliminating all emissions from a BART source, and provides a useful metric for determining which sources are unlikely to warrant additional controls to satisfy BART.

The MANE–VU modeling effort analyzed 136 BART-eligible sources in the MANE–VU region using the CALPUFF modeling platform and two meteorological data sets: (1) A wind field based on National Weather Service (NWS) observations; and (2) a wind field based on the Pennsylvania State University/National Center for Atmospheric Research Mesoscale Meteorological Model (MM5) version 3.6. Modeling results from both the NWS and MM5 platforms include each BART eligible unit's maximum 24-hr, 8th highest 24-hr, and annual average impact at the Class I area.[8] These visibility impacts were modeled relative to the 20 percent best, 20 percent worst, and average annual natural background conditions. In accordance with EPA guidance, which allows the use of either estimates of the 20 percent best or the annual average of natural background visibility conditions as the basis for calculating the deciview difference that individual sources would contribute for BART modeling purposes, MANE–VU opted to utilize the more conservative best conditions estimates approach because it is more protective of visibility.

The 2002 baseline modeling provides an estimate of the maximum improvement in visibility at Class I Areas in the region that could result from the installation of BART controls (the maximum improvement is equivalent to a ''zero-out'' of emissions). In virtually all cases, the installation of BART controls would result in less visibility improvement than what is represented by a source's 2002 impact, but this approach does provide a consistent means of identifying those sources with the greatest contribution to visibility impairment.

In addition to modeling the maximum potential improvement from BART, MANE–VU also determined that 98 percent of the cumulative visibility impact from all MANE–VU BART eligible sources corresponds to a maximum 24-hr impact of 0.22 dv from the NWS-driven data and 0.29 dv from the MM5 data. As a result, MANE–VU concluded that, on the average, a range of 0.2 to 0.3 dv would represent a significant impact at MANE–VU Class I areas, and sources having less than 0.1 dv impact are unlikely to warrant additional controls under BART.[9]

For Massachusetts, sources with visibility impact of 0.1 dv or less are: Braintree Electric Unit 3; Harvard University—Blackstone Units 11 and 12; Mirant- Kendall Units 1 and 2; New Boston Unit 1; Eastman Gelatin Units 1, 2, 3, and 4; Solutia; and Trigen—Kneeland Unit 3.[10] Massachusetts determined that the cost of installing additional controls on these de minimis units was not cost effective given the minimal expected visibility impact. Massachusetts therefore determined that current controls represent BART for these units.

5. Source Specific BART Determination

The Regional Haze Rule allows Massachusetts to either make individual BART determinations or to implement

[6] Massachusetts' decision that all BART eligible sources are subject to BART should not be misconstrued to mean that all BART-eligible sources must install controls. For sources subject to a source-specific BART determination, Massachusetts' approach simply requires the consideration of each of the five statutory factors before determining whether or not controls are warranted. For sources that were not subject to source-specific BART determinations, Massachusetts' alternative to BART requires greater overall reductions than would have been achieved by application of source-specific BART, but may not require all sources to install additional controls.

[7] The MANE–VU modeling protocol can be found in the NESCAUM ''BART Resource Guide,'' dated August 23, 2006, (*www.nescaum.org/documents/bart-resource-guide/bart-resource-guide-08-23-06-final.pdf/*)

[8] The NWS and MM5 platform modeling results can be found in Appendices R–1 and R–2 of the SIP submittal.

[9] As an additional demonstration that sources whose impacts were below the 0.1 dv level were too small to warrant BART controls, the entire MANE–VU population of these units was modeled together to examine their cumulative impacts at each Class I area. The results of this modeling demonstrated that the maximum 24-hour impact at any Class I area of all modeled sources with individual impacts below 0.1 dv was only a 0.35 dv change relative to the estimated best days natural conditions at Acadia National Park. This value is well below the 0.5 dv impact used by most RPOs and States for determining whether a BART-eligible source contributes to visibility impairment.

[10] Trigen-Kneeland has been added to this list, despite its modeled impact of 0.146 dv (0.127 dv from NO_3) using the MM5 modeling platform, due to two significant errors in the 2002 input data used by MANE–VU to screen facilities for their impact on visibility. First, Units 1–4 were included in the modeling when only Unit 3 is BART-eligible. Second, the 2002 modeled NO_X emissions from Unit 3 were 396 tons, rather than the actual 96 tons of NO_X emissions. Massachusetts believes that the modeling using the corrected 2002 NO_X emissions from Trigen-Kneeland would indicate a total visibility impact of <0.1 dv, therefore a source with a de minimis impact on visibility.

an alternative that will achieve greater reasonable progress toward natural visibility conditions. Massachusetts developed an individual BART determination for Wheelabrator—Saugus Units 1 and 2.

a. Background

Wheelabrator-Saugus is a municipal waste combustor which contains two mass burn incinerators with water wall boilers, each rated at 325 MMBtu/hr heat input. Both incinerator units are BART-eligible, with reported combined 2002 emissions of 84 tons of SO_2 and 721 tons of NO_X.

b. NO_X BART Review

Wheelabrator has NO_X control for both units that includes low-NO_X burners and Selective Non-Catalytic Reduction (SNCR). The current NO_X emission limit is 205 ppm (by volume at 7 percent oxygen dry basis, 24-hour arithmetic average). MassDEP believes that the low-NO_X burners and SNCR are the most stringent control available for municipal waste combustors. At MassDEP's request, the facility performed furnace gas temperature profiling and conducted SNCR optimization testing to determine the capability to further reduce NO_X emission while minimizing ammonia slip. The optimization test results indicated that a reduced NO_X emission target of 185 ppm (dry, 7% O_2) could be achieved with the existing SNCR system. Therefore Massachusetts determined that the NO_X emission rate of 185 ppm (30-day average) for each of Wheelabrator's units represents BART.

c. SO_2 BART Review

Wheelabrator's existing control technology for SO_2 emissions includes a spray dry absorber (SDA) with lime slurry injection. Wheelabrator's permitted SO_2 emission limit is 29 ppm (by volume at 7 percent oxygen dry basis, 24-hour geometric mean). CALPUFF modeling suggests that visibility impacts from 2002 SO_2 emissions from Wheelabrator—Saugus are below 0.1 dv on the worst day at any Class I area. Massachusetts determined that further controls for SO_2 are not warranted given the minimal potential visibility improvement and that current controls are equivalent to federal Maximum Achievable Control Technology (MACT) standards (40 CFR Part 60 Subpart Cb).

d. PM BART Review

Each of Wheelabrator's units is equipped with 10-module fabric filters (baghouses) and is subject to a PM emission limit 27 mg/dscm or less at 7 percent oxygen (dry basis). On March 14, 2012, MassDEP issued an ECP Modified Final Approval for Wheelabrator that reduced its PM emission limit to 25 mg/dscm or less at 7 percent oxygen (dry basis). Massachusetts determined that additional PM controls were not warranted given the additional cost of installation and the already strict controls in place at Wheelabrator.

e. EPA Assessment

EPA has reviewed the Massachusetts analysis and concluded it was conducted in a manner consistent with EPA's BART Guidelines. The proposed NO_X, PM, and SO_2 limits meet the current federal Maximum Achievable Control Technology (MACT) limits. See 40 CFR Part 60 Subpart Cb (71 FR 27324, May 10, 2006). The BART Rule states, ''Unless there are new technologies subsequent to the MACT standards which would lead to cost-effective increases in the level of control, you may rely on the MACT standards for purposes of BART.'' (50 FR 39164, (July 6, 2005)). The MACT standard for Large Municipal Waste Combustors was modified in 2006, with the standards taking effect in 2009. We are currently unaware of any new technology available that would require reevaluation of the cost-effectiveness of additional controls. EPA is proposing to find that the Massachusetts analysis and conclusions for the BART emission units located at Wheelabrator—Saugus are reasonable.

6. Identification of All BART Source Categories Covered by the Alternative Program

To address the BART requirement for the remaining sources subject to BART, Massachusetts opted to implement an ''Alternative to BART'' measure.

In crafting Massachusetts' Alternative to BART demonstration, the State relied on: SO_2 and NO_X emission reductions required by 310 CMR 7.29, ''Emissions Standards for Power Plants;'' the retirement of Somerset Power; permit restrictions for Brayton Point, Salem Harbor, and Mount Tom Station that limits SO_2 and/or NO_X emissions; 310 CMR 7.19, ''Reasonably Available Control Technology for sources of Oxides of Nitrogen NO_X;'' and MassDEP's proposed amendments to its low sulfur fuel oil regulation, which requires EGU's that burn residual oil to limit the sulfur content of 0.5% by weight beginning July 1, 2014.

The Massachusetts Alternative to BART includes emission reductions from all of the remaining BART-eligible EGUs, as well as, select EGUs determined to be too old to meet the definition of BART-eligible.

7. Determination of the BART Benchmark

In developing the BART benchmark,[11] with one exception, States must follow the approach for making source-specific BART determinations under section 51.308(e)(1). The one exception to this general approach is where the alternative program has been designed to meet requirements other than BART, such as being part of the State's long term strategy to meet reasonable progress goals. In this case, States are not required to conduct a full BART analysis under 51.308(e)(1) for each source and may instead use simplifying assumptions in establishing a BART benchmark based on an analysis of what BART is likely to be for similar types of sources within a source category using category-wide or source-specific information as appropriate. Under either approach to establishing a BART benchmark, we believe that the presumptions for EGUs in the BART Guidelines should be used for comparison to a trading or other alternative program, unless the State determines that such presumptions are not appropriate for a particular EGU. See 71 FR 60619. Massachusetts' program is part of the State's long term strategy and even though Massachusetts had the option of using the less stringent EPA presumptive limits, the State opted to use the MANE–VU recommended BART emission limits for non-CAIR EGUs in setting the BART benchmark. These limits are listed in Table 2.

[11] The BART benchmark is intended to provide a target emission reduction—what would the expected reductions in emissions have been if the State had chosen to apply source-specific BART to all of its BART sources—for comparison to the Alternative to BART.

TABLE 2—MANE–VU RECOMMENDED BART LIMITS

Category	SO_2 Limits	NO_X Limits
Non-CAIR EGUs	Coal—95% control or 0.15 lb/MMBtu	In NO_X SIP call area, extend use of controls to year round.
	Oil—95% control or 0.33 lb/MMBtu (0.3% fuel sulfur limit).	0.1–0.25 lb/MMBtu depending on coal and boiler type.

8. Massachusetts' SO_2 Alternative BART Program

The Massachusetts Alternative to BART is comprised of:

- 310 CMR 7.29, ''Emission Standards for Power Plants,'' which establishes SO_2 emission standards for certain EGUs.
- Permit restrictions for Mount Tom Station, Brayton Point Station, and Salem Harbor that disallow the use of 310 CMR 7.29 SO_2 Early Reduction Credits and federal Acid Rain Allowances for compliance with 310 CMR 7.29.
- An annual cap of 300 tons of SO_2 for Salem Harbor Unit 2, and a shutdown of Units 3 and 4 beginning June 1, 2014.
- The retirement of Somerset Power in 2010.
- MassDEP's proposed low sulfur fuel oil regulation, which would require EGUs that burn residual oil to limit the sulfur content to 0.5% by weight beginning July 1, 2014.

Massachusetts included previously adopted 310 CMR 7.29, ''Emission Standards for Power Plants,'' as part of its February 17, 2012 proposed Regional Haze SIP supplement. 310 CMR 7.29 was adopted in 2001 as a means to reduce NO_X, SO_2, mercury (Hg), and carbon dioxide (CO_2) emissions from the State's largest fossil fueled EGUs. The rule established a two-phased schedule. The second phase became effective October 1, 2006. The Massachusetts Emission Standards for power plants establishes a facility-wide rolling 12-month SO_2 emission rate of 3.0 pounds per megawatt-hour and a monthly average emission rate of 6.0 pounds per megawatt-hour. This regulation allows the use of SO_2 Early Reduction Credits (on a 1 ton credit to 1 ton excess emission basis) and the use of federal Acid Rain SO_2 Allowances (on a 3 ton allowance to 1 ton excess emission basis) for compliance with the 3.0 pound per mega-watt hour emission rate. 310 CMR 7.29 applies to Brayton Point (Units 1, 2, 3, 4), Canal Station (Units 1 and 2), Mount Tom Station (Unit 1), Mystic Station (Units 4, 5, 6, 7, 81, 82, 93, and 94), Salem Harbor Station (Units 1, 2, 3, and 4), and NRG Somerset (Unit 8).

On May 15, 2009, MassDEP issued an amended Emission Control Plan Final Approval [12] for Mount Tom that prohibits the use of Early Reduction Credits (ERCs) and federal Acid Rain Allowances for compliance with 310 CMR 7.29 after June 1, 2014. In a similar fashion, on February 16, 2012, at Brayton Point's request, MassDEP issued an Amended Emission Control Plan Draft Approval [13] which prohibits the use of ERCs and federal Acid Rain Allowances for compliance with 310 CMR 7.29 after June 1, 2014.

On February 17, 2012, at Salem Harbor's request, MassDEP proposed an Amended Emission Control Plan [14] that prohibits the use of ERCs and federal Acid Rain Allowances for compliance with 310 CMR 7.29, after June 1, 2014. The emission control plan also establishes an annual cap of 300 tons of SO_2 for Salem Harbor 2 and the shutdown of Units 3 and 4 effective June 1, 2014. Per a consent decree,[15] Salem Harbor Units 1 and 2 were removed from service as of December 31, 2011, which means that these units can no longer generate electricity for the power grid. However, under the consent decree these units were not restricted from operating for other purposes. The consent decree therefore does not act as a federally enforceable limit on emissions from these units. MassDEP's proposed permit restrictions will make the emission reductions from Salem Harbor federally enforceable. As such these reductions are not required under the consent decree and are included in Massachusetts' Alternative to BART.

Instead of complying with 310 CMR 7.29, Somerset Power ceased operating in 2010, and on June 22, 2011, at Somerset Power's request, MassDEP issued a letter that revoked all air approvals and permits for the facility and deemed all pending permit applications withdrawn.[16]

The final component of the Massachusetts Alternative to BART is the MassDEP proposed amendment to 310 CMR 7.05, ''Fuels All Districts,'' to lower the allowable sulfur content of distillate oil and residual oil combusted by stationary sources. For residual oil, 310 CMR 7.05 currently includes a range of sulfate content limits, from 0.5% to 2.2%, depending on the area of the state. The proposed amendment would establish a 0.5% sulfur content limit for power plants as of July 1, 2014.

Analysis of Alternative to BART for SO_2

Table 3 shows the BART benchmark projected SO_2 emissions for the BART-eligible units included in the alternative program. The emissions were calculated by multiplying the MANE–VU BART workgroup recommended BART SO_2 emission rate in lb/MMBtu (see Table 2 above) by each unit's 2002 baseline heat input in MMBtu. Massachusetts determined that the BART benchmark emission reduction is 50,752 tons of SO_2 (68,328 tons minus 17,576 tons).

[12] The Mount Tom amended Emission Control Plan can be found in Appendix EE of the February 17, 2012 Proposed Revision to Massachusetts Regional Haze State Implementation Plan.

[13] The Brayton Point amended Emission Control Plan can be found in Appendix GG of the February 17, 2012 Proposed Revision to Massachusetts Regional Haze State Implementation Plan.

[14] The Salem Harbor amended Emission Control Plan can be found in Appendix FF of the February 17, 2012 Proposed Revision to Massachusetts Regional Haze State Implementation Plan.

[15] Conservation Law Foundation v. Dominion Energy New England, Inc., Case No. 1:10–cv–11069 (D. Mass. 2012), *http://www.clf.org/wp-content/uploads/2012/02/Signed-Consent-Decree-12_11.pdf.*

[16] Appendix HH of the Massachusetts February 17, 2012 SIP submittal.

TABLE 3—BART BENCHMARK FOR SO_2

BART eligible facility	Unit	2002 SO_2 emissions (tons)	2002 Heat input (MMBtu)	MANE–VU recommended SO_2 BART emission rate (lbs/MMBtu)	Estimated SO_2 emissions (tons)
Brayton Point	1	9,254	17,000,579	0.15	1,275
Brayton Point	2	8,853	15,896,795	0.15	1,192
Brayton Point	3	19,450	36,339,809	0.15	2,725
Brayton Point	4	2,037	4,787,978	0.33	790
Canal Station	1	13,066	27,295,648	0.33	4,504
Canal Station	2	8,948	19,440,919	0.33	3,208
Cleary Flood	8	39	92,567	0.33	15
Cleary Flood	9	68	2,123,819	0.33	350
Mystic	7	3,727	15,172,657	0.33	2,503
Salem Harbor	4	2,886	6,137,412	0.33	1,013
Total		68,328			17,576

Table 4 shows the Alternative to BART estimated SO_2 emissions, which MassDEP calculated by multiplying the proposed low-sulfur fuel oil regulation SO_2 emission rates in lbs/MMBtu by the 2002 heat input in MMBtu, or by multiplying the 310 CMR 7.29 SO_2 rolling 12-month emission rate in lbs/MWh by the 2002 megawatt-hours electrical generation, and accounting for permit restrictions in effect at Mount Tom Station and proposed for Brayton Point and Salem Harbor, as well as the retirement of Somerset Power. MassDEP calculated that the Alternative to BART results in an estimated emission reduction of 54,986 tons from 2002 emissions (89,254 tons minus 34,268). This reduction is 4,234 tons (54,986 tons minus 50,752 tons) more than the calculated emission reduction from the BART benchmark. Massachusetts determined that its proposed Alternative to BART for SO_2 would therefore result in more emissions reductions than would have been achieved through the application of source-specific BART.

TABLE 4—ALTERNATIVE TO BART FOR SO_2

Facility	Unit	2002 SO_2 emissions (tons)	2002 Heat input (MMBtu) or generation (MWh)	Alternative BART emission rate (lbs/MMBtu or lbs/MWh)	Estimated SO_2 emissions (tons)
Brayton Point	1	9,254	1,951,839 MWh	3.0 lbs/MWh	2,928
Brayton Point	2	8,853	1,855,515 MWh	3.0 lbs/MWh	2,783
Brayton Point	3	19,450	4,294,957 MWh	3.0 lbs/MWh	6,442
Brayton Point	4	2,037	4,787,978 MMBtu	0.56 lbs/MMBtu	1,341
Canal Station	1	13,066	27,295,648 MMBtu	0.56 lbs/MMBtu	7,643
Canal Station	2	8,948	19,440,919 MMBtu	0.56 lbs/MMBtu	5,443
Cleary Flood	8	39	92,567 MMBtu	0.56 lbs/MMBtu	25
Cleary Flood	9	68	2,123,819 MMBtu	0.56 lbs/MMBtu	595
Mount Tom	1	5,282	1,047,524 MWh	3.0 lbs/MWh	1,571
Mystic	7	3,727	15,172,657 MMBtu	0.56 lbs/MMBtu	4,248
Salem Harbor	1	3,425	631,606 MWh	3.0 lbs/MWh	947
Salem Harbor	2	2,821	527,939 MWh	Cap	300
Salem Harbor	3	4,999	974,990 MWh	Retired	0
Salem Harbor	4	2,886	6,137,412 MMBtu	Retired	0
Somerset	8	4,399	8,910,087 MMBtu	Retired	0
Total		89,254			34,268

Section 40 CFR 51.308(e)(3) provides a process for determining whether an alternative measure makes greater reasonable progress than would be achieved through the installation and operation of BART. If the geographic distribution of emission reductions is similar between an alternative measure and BART, the comparison of the two measures may be made on the basis of emissions alone. The alternative measure may be deemed to make greater progress than BART if it results in greater emission reductions than requiring sources subject to BART to install, operate, and maintain BART. In this case, the Alternative to BART achieves greater emission reductions than BART. Aside from Mount Tom, all of the Alternative to BART sources are coastally located EGUs in Eastern Massachusetts—two of which, Brayton Point and Somerset, are located in the same municipality. Massachusetts concluded that the geographic distribution of emission reductions is not significantly different than the application of source specific BART. Therefore, Massachusetts determined that its Alternative to BART for SO_2 would result in greater reasonable progress than application of source-specific BART.

9. Massachusetts' NO_X Alternative BART Program

The Massachusetts Alternative to BART for NO_X relies on:

- 310 CMR 7.29, ''Emissions Standards for Power Plants,'' which establishes NO_X emissions limits for certain EGUs.

• An annual cap of 276 tons of NO_X for Salem Harbor Unit 1 and an annual cap of 50 tons of NO_X for Unit 2, and a shutdown of Units 3 and 4 beginning June 1, 2014.

• The retirement of Somerset Power in 2010.

• 310 CMR 7.19, ''Reasonably Available Control Technology (RACT) for Sources of Oxides of Nitrogen NO_X,'' which establishes NO_X emission standards for various sources, including EGUs.

MassDEP's existing regulation 310 CMR 7.29, ''Emission Standards for Power Plants'' establishes a rolling 12-month average NO_X emission rate of 1.5 lbs/MWh and a monthly average emission rate of 3 lbs/MWh. 310 CMR 7.29 applies to Brayton Point (Units 1, 2, 3, 4), Canal Station (Units 1 and 2), Mount Tom Station (Unit 1), Mystic Station (Units 4, 5, 6, 7, 81, 82, 93, and 94), Salem Harbor Station (Units 1, 2, 3, and 4), and NRG Somerset (Unit 8).

On February 17, 2012, at Salem Harbor's request, MassDEP proposed an Amended ECP Approval [17] that requires an annual cap of 276 tons of NO_X for Salem Harbor Unit 1 and an annual cap of 50 tons of NO_X for Unit 2, and a shutdown of Units 3 and 4 beginning June 1, 2014. While these units are subject to a consent decree that requires them to be removed from electric generation service, the consent decree does not prevent these units from operation other than electric generation service. Therefore, Massachusetts' proposed Amended ECP Approval will result in an enforceable limitation on emissions from Salem Harbor in excess of currently required reductions.

Somerset Power ceased operating in 2010, and on June 22, 2011, at Somerset's Power's request, MassDEP issued a letter [18] that revoked all air approvals and permits for the facility and deemed all pending permit applications withdrawn.

MassDEP's existing regulation 310 CMR 7.19 establishes NO_X emission rates for various stationary sources, including EGUs. Under 310 CMR 7.19, Cleary Flood Units 8 and 9 are subject to a NO_X emission rate of 0.28 lbs/MMBtu. Mystic Unit 7 is subject to a NO_X emission rate of 0.25 lb/MMBtu. Mystic is also subject to 310 CMR 7.29 on a facility-wide basis. However, Mystic Unit 7 could exceed the 310 CMR 7.29 NO_X rate of 1.5 lbs/MWh while the facility as a whole complies with the rate because the other units at Mystic are natural gas-fired with low NO_X emissions, and therefore the 310 CMR 7.19 unit-specific NO_X rate of 0.25 lbs/MMBtu is the controlling factor for Unit 7.

Analysis of the Alternative BART Program for NO_X

Table 5 shows the BART benchmark NO_X emissions for the BART-eligible units, which were calculated by multiplying the lowest, more stringent MANE–VU BART workgroup recommended emission rate of 0.1 lb/MMBtu by the 2002 heat input in MMBtu. The BART benchmark results in a calculated emission reduction of 12,820 tons of NO_X (20,034 tons minus 7,214 tons) from 2002 emissions.

TABLE 5—BART BENCHMARK FOR NO_X

BART-eligible facility	Unit	2002 NO_X emissions (tons)	2002 Heat input (MMBtu)	MANE–VU recommended BART NO_X emission rate (lbs/MMBtu)	Estimated NO_X emissions (tons)
Brayton Point	1	2,513	17,000,579	0.10	850
Brayton Point	2	2,270	15,896,795	0.10	795
Brayton Point	3	7,335	36,339,809	0.10	1,817
Brayton Point	4	552	4,787,978	0.10	239
Canal Station	1	3,339	27,295,648	0.10	1,365
Canal Station	2	2,260	19,440,919	0.10	972
Cleary Flood	8	12	92,567	0.10	5
Cleary Flood	9	161	2,123,819	0.10	106
Mystic	7	805	15,172,657	0.10	759
Salem Harbor	4	787	6,137,412	0.10	307
Total	.....	20,034	.....	.....	7,214

Table 6 shows the Alternative to BART NO_X emissions, which were calculated by multiplying MassDEP's 310 CMR 7.29 NO_X emission rate in lb/MWh and 310 CMR 7.19 NO_X emission rate in lb/MMBtu by the 2002 electricity generation in MWh and 2002 heat input in MMBtu respectively, and accounting for permit restrictions proposed for Salem Harbor and the retirement of Somerset Power. The Alternative to BART results in an emission reduction of 13,116 tons (26,455 tons minus 13,339 tons) from 2002 emissions. The estimated NO_X reductions from the Alternative to BART are 296 tons (13,116 tons minus 12,820 tons) more than estimated reductions from BART alone. Massachusetts determined that its proposed Alternative to BART for NO_X would therefore result in more emissions reductions than would have been achieved through the application of source-specific BART.

TABLE 6—ALTERNATIVE TO BART FOR NO_X

Facility	Unit	2002 NO_X emission (tons)	2002 heat input (MMBtu) or generation (MWh)	Alternative BART emission rate (lbs/MMBtu or lbs/MWh)	Estimated NO_X emissions (tons)
Brayton Point	1	2,513	1,951,839 MWh	1.5 lbs/MWh	1,464
Brayton Point	2	2,270	1,855,515 MWh	1.5 lbs/MWh	1,392

[17] The Salem Harbor amended Emission Control Plan can be found in Appendix FF of the February 17, 2012 Proposed Revision to Massachusetts Regional Haze State Implementation Plan.

[18] Appendix HH of the Massachusetts February 17, 2012 SIP submittal.

TABLE 6—ALTERNATIVE TO BART FOR NO_X—Continued

Facility	Unit	2002 NO_X emission (tons)	2002 heat input (MMBtu) or generation (MWh)	Alternative BART emission rate (lbs/MMBtu or lbs/MWh)	Estimated NO_X emissions (tons)
Brayton Point	3	7,335	4,294,957 MWh	1.5 lbs/MWh	3,221
Brayton Point	4	552	401,305 MWh	1.5 lbs/MWh	301
Canal Station	1	3,339	2,945,578 MWh	1.5 lbs/MWh	2,209
Canal Station	2	2,260	1,910,079 MWh	1.5 lbs/MWh	1,433
Cleary Flood	8	12	92,567 MMBtu	0.28 lbs/MMBtu	13
Cleary Flood	9	161	2,123,819 MMBtu	0.28 lbs/MMBtu	297
Mount Tom	1	1,969	1,047,524 MWh	1.5 lbs/MWh	786
Mystic	7	805	15,172,657 MMBtu	0.25 lbs/MMBtu	1,897
Salem Harbor	1	920	631,606 MWh	Cap	276
Salem Harbor	2	755	527,939 MWh	Cap	50
Salem Harbor	3	1,331	974,990 MWh	Retired	0
Salem Harbor	4	787	508,342 MWh	Retired	0
Somerset	8	1,445	8,910,087 MMBtu	Retired	0
Total		26,455			13,339

As with SO_2, the Alternative to BART achieves greater NO_X emission reductions than source by source BART. Massachusetts determined that the geographic distribution of the emission reductions is not significantly different than the application of source specific BART. Therefore, Massachusetts determined that its Alternative to BART would result in greater reasonable progress than application of source-specific BART.

10. EPA's Assessment of Massachusetts' Alternative to BART Demonstration

EPA is proposing to find that Massachusetts has demonstrated that the Alternative to BART achieves greater SO_2 and NO_X emission reductions than expected from source by source BART. EPA is also proposing to find that the geographic distribution of the emission reductions from the Alternative to BART is not significantly different to the geographic distribution expected from source by source BART emission reductions, therefore visibility modeling is not required, as noted in the Alternative to BART Rule. See 71 FR 60612.[19] Thus, EPA is proposing to find that the SO_2 and NO_X Alternative to BART measures meet the requirements of the Alternative to BART Rule.

11. Massachusetts' PM BART Determinations

Massachusetts' proposed Alternative to BART does not cover PM_{10} emissions. An overview of 2002 and 2009 PM_{10} emissions and PM controls at the EGU BART sources is contained in Table 7. Collectively, these facilities emitted 1,531 tons of PM_{10} in 2002 that diminished visibility in the New England Class I areas by 0.032–0.037 deciviews. Through installation of controls for other purposes, these facilities have significantly reduced PM emissions, so that in 2009 these facilities emitted a total of 109 tons of PM_{10}.

TABLE 7—MASSACHUSETTS PM_{10} BART SOURCES, EMISSIONS, AND CONTROLS

Source	Unit	PM_{10} dv	2002 PM_{10} emissions (tpy)	2009 PM_{10} emissions (tpy)	PM controls	PM emission limits lbs/MMBtu as of 2009
Brayton Point	1	0.031, 0.026	386	39	Fabric Filter Baghouse	0.08
Brayton Point	2				Fabric Filter Baghouse	0.08
Brayton Point	3				Fabric Filter Baghouse (Planned).	0.08
Brayton Point	4	0.000, 0.000	6	0	ESP	0.03
Canal Station	1	0.000, 0.000	672	60	ESP	0.02
Canal Station	2				ESP	0.02
Mystic Station	7	0.002, 0.003	131	4	ESP	0.05
Salem Harbor	4	0.001, 0.001	316	0	ESP	0.04
Cleary Flood	8	0.003, 0.002	20	6	None	0.12
Cleary Flood	9				None	0.12

CALPUFF modeling of the 2002 PM emissions at these facilities shows an impact that was well below the 0.1 dv on the worst day at affected Class I areas, for each unit and cumulatively, which is the level MANE–VU has identified that the degree of visibility improvement is so small (<0.1 dv) that no reasonable weighting of factors could justify additional controls under BART. The visibility would be even lower today based on the emission reductions achieved since 2002. Massachusetts therefore determined that no additional controls are warranted for primary PM_{10}.

[19] In addition, because the SO_2 and NO_X Alternatives to BART do not involve emissions trading between sources, review under EPA's Guidance on Economic Incentive Programs (EIPs) is not required. *Improving Air Quality with Economic Incentive Programs* (2001), *http://www.epa.gov/ttncaaa1/t1/memoranda/eipfin.pdf.*

EPA's Assessment

EPA is proposing to approve Massachusetts' determination that further primary PM control beyond the controls already implemented by Massachusetts' BART-eligible units is not warranted at this time as such measures are not cost-effective and the visibility contribution from Massachusetts' BART-eligible units with respect to PM is insignificant.

12. BART Enforceability

The BART emission limits referenced above are enforceable through a variety of mechanisms. Specifically, MassDEP's 310 CMR 7.19, ''Reasonably Available Control Technology (RACT) of Sources of Oxides of Nitrogen (NO_X),'' which establishes NO_X emission rates for various stationary sources, including EGUs, was previously approved into the Massachusetts SIP on December 27, 2000. See 65 FR 81743. The PM limits for Brayton Point (Units 1, 2 3, and 4), Canal Station (Units 1 and 2), Mystic Station (Unit 7), and Salem Harbor (Unit 4) are enforceable by permit conditions issued under Massachusetts' federally approved permit process. In addition, the PM limits for Cleary Flood (Units 8 and 9) are enforceable via 310 CMR 7.02, ''Plans and Approvals and Emission Limitations,'' which was previously approved into the Massachusetts SIP on October 28, 1972. See 37 FR 23085. Finally, a number of requirements were included in the MassDEP February 17, 2012 proposal.

Pursuant to MassDEP's request for parallel processing of the proposed SIP revision, EPA is proposing approval of Massachusetts' Final ECP Approval—Wheelabrator Saugus, Amended ECP for Brayton Point, Amended ECP for Salem Harbor Station, Amended ECP for Mount Tom Station, Amended ECP for Somerset Station, and previously adopted 310 CMR 7.29, ''Emission Standards for Power Plants,'' and proposed Amendments to 310 CMR 7.05, ''Fuels all Districts'' and 310 CMR 7.00, ''Definitions.'' After the State submits the final version of the February 17, 2012 proposed SIP revision (including a response to all public comments raised during the State's public participation process), EPA will prepare a final rulemaking notice. If the State's formal SIP submittal contains changes which occur after EPA's notice of proposed rulemaking, such changes must be described in EPA's final rulemaking action. If the State's changes are significant, then EPA must decide whether to finalize approval with a description of the changes, re-propose our action with regard to the State's SIP submittal, or take other action as may be appropriate.

C. Long-Term Strategy

As described in Section II.E of this action, the LTS is a compilation of State-specific control measures relied on by the State to obtain its share of emission reductions to support the RPGs established by Maine, New Hampshire, Vermont, and New Jersey, the nearby Class I area States. Massachusetts' LTS for the first implementation period addresses the emissions reductions from federal, State, and local controls that take effect in the State from the baseline period starting in 2002 until 2018. Massachusetts participated in the MANE–VU regional strategy development process and supported a regional approach towards deciding which control measures to pursue for regional haze, which was based on technical analyses documented in the following reports:

(a) The Contribution Report; (b) *Assessment of Reasonable Progress for Regional Haze in MANE–VU Class I Areas* (available at *www.marama.org/visibility/RPG/FinalReport/RPGFinalReport_070907.pdf*); (c) *Five-Factor Analysis of BART-Eligible Sources: Survey of Options for Conducting BART Determinations* (available at *www.nescaum.org/documents/bart-final-memo-06-28-07.pdf*); and (d) *Assessment of Control Technology Options for BART-Eligible Sources: Steam Electric Boilers, Industrial Boilers, Cement Plants and Paper, and Pulp Facilities* (available at *www.nescaum.org/documents/bart-control-assessment.pdf*).

1. Emissions Inventory for 2018 With Federal and State Control Requirements

The State-wide emissions inventories used by MANE–VU in its regional haze technical analyses were developed by MARAMA for MANE–VU with assistance from Massachusetts. The 2018 emissions inventory was developed by projecting 2002 emissions forward based on assumptions regarding emissions growth due to projected increases in economic activity and emissions reductions expected from federal and State regulations. MANE–VU's emissions inventories included estimates of NO_X, PM_{10}, $PM_{2.5}$, SO_2, VOC, and NH_3. The BART guidelines direct States to exercise judgment in deciding whether VOC and NH_3 impair visibility in their Class I area(s). As discussed further in Section III.C.3 below, MANE–VU demonstrated that anthropogenic emissions of sulfates are the major contributor to $PM_{2.5}$ mass and visibility impairment at Class I areas in the Northeast and Mid-Atlantic region. It was also determined that the total ammonia emissions in the MANE–VU region are extremely small.

MANE–VU developed emissions inventories for four inventory source classifications: (1) Stationary point sources, (2) stationary area sources, (3) non-road mobile sources, and (4) on-road mobile sources. The New York Department of Environmental Conservation also developed an inventory of biogenic emissions for the entire MANE–VU region. Stationary point sources are those sources that emit greater than a specified tonnage per year, depending on the pollutant, with data provided at the facility level. Stationary area sources are those sources whose individual emissions are relatively small, but due to the large number of these sources, the collective emissions from the source category could be significant. Non-road mobile sources are equipment that can move but do not use the roadways. On-road mobile source emissions are automobiles, trucks, and motorcycles that use the roadway system. The emissions from these sources are estimated by vehicle type and road type. Biogenic sources are natural sources like trees, crops, grasses, and natural decay of plants. Stationary point sources emission data is tracked at the facility level. For all other source types, emissions are summed on the county level.

There are many federal and State control programs being implemented that MANE–VU and Massachusetts anticipate will reduce emissions between the baseline period and 2018. Emission reductions from these control programs in the MANE–VU region were projected to achieve substantial visibility improvement by 2018 at all of the MANE–VU Class I areas. To assess emissions reductions from ongoing air pollution control programs, BART, and reasonable progress goals, MANE–VU developed 2018 emissions projections called ''Best and Final.'' The emissions inventory provided by the Commonwealth of Massachusetts for the Best and Final 2018 projections is based on expected control requirements.

Massachusetts relied on emission reductions from the following ongoing and expected air pollution control programs as part of the State's long term strategy. For electrical generating units (EGUs), Massachusetts relied on 310 CMR 7.29, ''Emissions Standards for Power Plants'' which limits SO_2 and NO_X emissions from the six largest fossil fuel-fired power plants in Massachusetts. Massachusetts also

relied on the following controls on non-EGU point sources in estimating 2018 emissions inventories: NO_X SIP Call Phases I and II; NO_X Reasonably Available Control Technology (RACT) in 1-hour Ozone SIP; VOC 2-year, 4-year, 7-year and 10-year Maximum Achievable Control Technology (MACT) Standards; Combustion Turbine and Reciprocating Internal Combustion Engine (RICE) MACT; and Industrial Boiler/Process Heater MACT (also known as the Industrial Boiler MACT).

On July 30, 2007, the U.S. Court of Appeals for the District of Columbia vacated and remanded the Industrial Boiler MACT Rule. *NRDC* v. *EPA,* 489F.3d 1250 (D.C. Cir. 2007). This MACT was vacated since it was directly affected by the vacatur and remand of the Commercial and Industrial Solid Waste Incinerator (CISWI) definition rule. EPA proposed a new Industrial Boiler MACT rule to address the vacatur on June 4, 2010 (75 FR 32006) and issued a final rule on March 21, 2011 (76 FR 15608). On May 18, 2011, EPA stayed the effective date of the Industrial Boiler MACT pending review by the D.C. Circuit or the completion of EPA's reconsideration of the rule. See 76 FR 28662.

On December 2, 2011, EPA issued a proposed reconsideration of the MACT standards for existing and new boilers at major (76 FR 80598) and area (76 FR 80532) source facilities, and for Commercial and Industrial Solid Waste Incinerators (76 FR 80452). On January 9, 2012, the U.S. District Court for the District of Columbia vacated EPA's stay of the effectiveness date of the Industrial Boiler MACT, reinstating the original effective date and therefore requiring compliance with the current rule in 2014. *Sierra Club* v. *Jackson,* Civ. No. 11–1278, slip op. (D.D.C. Jan. 9, 2012).

Even though Massachusetts' modeling is based on the old Industrial Boiler MACT limits, Massachusetts' modeling conclusions are unlikely to be affected because the expected reductions in SO_2 and PM resulting from the vacated MACT rule are a relatively small component of the Massachusetts inventory and the expected emission reductions from the final MACT rule are comparable to those modeled. In addition, the new MACT rule requires compliance by 2014 and therefore the expected emission reductions will be achieved prior to the end of the first implementation period in 2018. Thus, EPA does not expect that differences between the old and revised Industrial Boiler MACT emission limits would affect the adequacy of the existing Massachusetts regional haze SIP. If there is a need to address discrepancies between projected emissions reductions from the old Industrial Boiler MACT and the Industrial Boiler MACT finalized in March 2011, we expect Massachusetts to do so in its 5-year progress report.

Controls on area sources expected by 2018 include: VOC rules for consumer products (310 CMR 7.25(12)); VOC control measures for architectural and industrial maintenance coatings (310 CMR 7.25(11)) and solvent cleaning (310 CMR 7.18(8)); VOC control measures for cutback asphalt paving (310 CMR 7.18(9)); and VOC control measures for portable fuel containers (contained in EPA's Mobile Source Air Toxics rule).

Controls on mobile sources expected by 2018 include: enhanced inspection and maintenance (I/M) inspection for 1984 and new vehicles (310 CMR 60.02); Federal On-Board Refueling Vapor Recovery (ORVR) Rule; Federal Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Requirements; Federal Heavy-Duty Diesel Engine Emission Standards for Trucks and Buses; and Federal Emission Standards for Large Industrial Spark-Ignition Engines and Recreation Vehicles.

Controls on non-road sources expected by 2018 include the following federal regulations: Control of Air Pollution: Determination of Significance for Nonroad Sources and Emission Standards for New Nonroad Compression Ignition Engines at or above 37 kilowatts (59 FR 31306, June 17, 1994); Control of Emissions of Air Pollution from Nonroad Diesel Engines (63 FR 56967, Oct. 23, 1998); Control of Emissions from Nonroad Large Spark-Ignition Engines and Recreational Engines (67 FR 68241, Nov. 8, 2002); and Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuels (69 FR 38958, June 29, 2004).

Tables 8 and 9 are summaries of the 2002 baseline and 2018 estimated emissions inventories for Massachusetts. The 2018 estimated emissions include emissions growth as well as emission reductions due to ongoing emission control strategies and reasonable progress goals.

TABLE 8—2002 EMISSION INVENTORY SUMMARY FOR MASSACHUSETTS

[Tons per year]

Category	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	5,647	45,590	4,161	5,852	1,526	101,049
Area	159,753	34,371	43,203	191,369	16,786	25,585
On-Road Mobile	57,186	143,368	2,410	3,408	5,499	4,399
Non-Road Mobile	56,749	42,769	3,226	3,531	28	3,791
Biogenics	113,957	1,257	.....	.....	.....	.....
Total	393,292	267,355	53,000	204,160	23,839	134,824

TABLE 9—2018 EMISSION INVENTORY SUMMARY FOR MASSACHUSETTS

[Tons per year]

Category	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	10,902	40,458	6,827	9,137	1,622	55,878
Area	134,963	36,199	31,237	82,027	19,552	1,804
On-Road Mobile	17,056	22,813	840	893	5,817	1,937
Non-Road Mobile	36,306	27,040	2,052	2,246	36	442
Biogenics	113,958	1,257	.....	.....	.....	.....
Total	313,185	127,767	40,956	94,303	27,027	60,061

2. Modeling To Support the LTS

MANE–VU performed modeling for the regional haze LTS for the 11 Mid-Atlantic and Northeast States and the District of Columbia. The modeling analysis is a complex technical evaluation that began with selection of the modeling system. MANE–VU used the following modeling system:

- *Meteorological Model:* The Fifth-Generation Pennsylvania State University/National Center for Atmospheric Research (NCAR) Mesoscale Meteorological Model (MM5) version 3.6 is a nonhydrostatic, prognostic meteorological model routinely used for urban- and regional-scale photochemical, $PM_{2.5}$, and regional haze regulatory modeling studies.
- *Emissions Model:* The Sparse Matrix Operator Kernel Emissions (SMOKE) version 2.1 modeling system is an emissions modeling system that generates hourly gridded speciated emission inputs of mobile, non-road mobile, area, point, fire, and biogenic emission sources for photochemical grid models.
- *Air Quality Model:* The EPA's Models-3/Community Multiscale Air Quality (CMAQ) version 4.5.1 is a photochemical grid model capable of addressing ozone, PM, visibility and acid deposition at a regional scale.
- *Air Quality Model:* The Regional Model for Aerosols and Deposition (REMSAD), is a Eulerian grid model that was primarily used to determine the attribution of sulfate species in the Eastern U.S. via the species-tagging scheme.
- *Air Quality Model:* The California Puff Model (CALPUFF), version 5 is a non-steady-state Lagrangian puff model used to access the contribution of individual States' emissions to sulfate levels at selected Class I receptor sites.

CMAQ modeling of regional haze in the MANE–VU region for 2002 and 2018 was carried out on a grid of 12x12 kilometer (km) cells that covers the 11 MANE–VU States (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont) and the District of Columbia and States adjacent to them. This grid is nested within a larger national CMAQ modeling grid of 36x36 km grid cells that covers the continental United States, portions of Canada and Mexico, and portions of the Atlantic and Pacific Oceans along the east and west coasts. Selection of a representative period of meteorology is crucial for evaluating baseline air quality conditions and projecting future changes in air quality due to changes in emissions of visibility-impairing pollutants. MANE–VU conducted an in-depth analysis which resulted in the selection of the entire year of 2002 (January 1–December 31) as the best period of meteorology available for conducting the CMAQ modeling. The MANE–VU States' modeling was developed consistent with EPA's *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze*, April 2007 (EPA–454/B–07–002, available at *www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf*), and EPA document, *Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,* August 2005 and updated November 2005 (EPA–454/R–05–001, available at *www.epa.gov/ttnchie1/eidocs/eiguid/index.html*) (hereinafter referred to as ''EPA's Modeling Guidance'').

MANE–VU examined the model performance of the regional modeling for the areas of interest before determining whether the CMAQ model results were suitable for use in the regional haze assessment of the LTS and for use in the modeling assessment. The modeling assessment predicts future levels of emissions and visibility impairment used to support the LTS and to compare predicted, modeled visibility levels with those on the uniform rate of progress. In keeping with the objective of the CMAQ modeling platform, the air quality model performance was evaluated using graphical and statistical assessments based on measured ozone, fine particles, and acid deposition from various monitoring networks and databases for the 2002 base year. MANE–VU used a diverse set of statistical parameters from the EPA's Modeling Guidance to stress and examine the model and modeling inputs. Once MANE–VU determined the model performance to be acceptable, MANE–VU used the model to assess the 2018 RPGs using the current and future year air quality modeling predictions, and compared the RPGs to the uniform rate of progress.

In accordance with 40 CFR 51.308(d)(3), the Commonwealth of Massachusetts provided the appropriate supporting documentation for all required analyses used to determine the State's LTS. The technical analyses and modeling used to support the LTS are consistent with EPA's RHR, and interim and final EPA Modeling Guidance. EPA is proposing to find the MANE–VU technical modeling to support the LTS is acceptable because the modeling system was chosen and used according to EPA Modeling Guidance. EPA agrees with the MANE–VU model performance procedures and results, and that CMAQ, REMSAD, and CALPUFF are appropriate tools for the regional haze assessments for the Massachusetts LTS and regional haze SIP.

3. Relative Contributions of Pollutants to Visibility Impairment

An important step toward identifying reasonable progress measures is to identify the key pollutants contributing to visibility impairment at each Class I area. To understand the relative benefit of further reducing emissions from different pollutants, MANE–VU developed emission sensitivity model runs using CMAQ to evaluate visibility and air quality impacts from various groups of emissions and pollutant scenarios in the Class I areas on the 20 percent worst visibility days.

Regarding which pollutants are most significantly impacting visibility in the MANE–VU region, MANE–VU's contribution assessment demonstrated that sulfate is the major contributor to $PM_{2.5}$ mass and visibility impairment at Class I areas in the Northeast and Mid-Atlantic Region. Sulfate particles commonly account for more than 50 percent of particle-related light extinction at northeastern Class I areas on the clearest days and for as much as, or more than, 80 percent on the haziest days. For example, at the Brigantine National Wildlife Refuge Class I area (the MANE–VU Class I area with the greatest visibility impairment), on the 20 percent worst visibility days in 2000–2004, sulfate accounted for 66 percent of the particle extinction. After sulfate, organic carbon (OC) consistently accounts for the next largest fraction of light extinction. Organic carbon accounted for 13 percent of light extinction on the 20 percent worst visibility days for Brigantine, followed by nitrate that accounts for 9 percent of light extinction. On the best visibility days, sulfate accounts for 50 percent of the particle related visibility extinction. Organic carbon accounts for the next largest contribution of 40 percent of the visibility impairment on the clearest days. Nitrate, elemental carbon, and fine soil typically contribute less than 10 percent of the visibility impairment mass on the clearest days.

The emissions sensitivity analyses conducted by MANE–VU predict that reductions in SO_2 emissions from EGU and non-EGU industrial point sources will result in the greatest improvements in visibility in the Class I areas in the

MANE–VU region, more than any other visibility-impairing pollutant. As a result of the dominant role of sulfate in the formation of regional haze in the Northeast and Mid-Atlantic Region, MANE–VU concluded that an effective emissions management approach would rely heavily on broad-based regional SO_2 control efforts in the eastern United States.

4. Meeting the MANE–VU ''Ask''

Since the Commonwealth of Massachusetts does not have a Class I area, it is not required to establish RPGs. However, as a MANE–VU member State, Massachusetts adopted the ''Statement of MANE–VU Concerning a Request for a Course of Action by States Within MANE–VU Toward Assuring Reasonable Progress'' on June 7, 2007. This document included four emission management strategies that will provide for reasonable progress towards achieving natural visibility at the MANE–VU Class I areas. These emission management strategies are collectively known as the MANE–VU ''Ask,'' and include: (a) Timely implementation of BART requirements; (b) a 90 percent reduction in SO_2 emissions from each of the EGU stacks identified by MANE–VU comprising a total of 167 stacks;[20] (c) adoption of a low sulfur fuel oil strategy; and (d) continued evaluation of other control measures to reduce SO_2 and NO_X emissions.

a. Timely Implementation of BART

Massachusetts will be controlling its BART sources through the application of source-specific BART or its Alternative to BART. The source-specific BART determinations and the Alternative to BART are discussed in detail in Section III.B. Massachusetts has requested parallel processing of its February 17, 2012 proposal to make several of the emission reductions expected from the Alternative to BART federally enforceable.

b. Ninety Percent Reduction in SO_2 Emissions From Each of the EGU Stacks Identified by MANE–VU Comprising a Total of 167 Stacks

Massachusetts is home to five sources with a total of 10 of the 167 EGU stacks which have been identified by MANE–VU as top contributors to visibility impairment in any of the MANE–VU Class I areas. These sources are Brayton Point (Units 1–3), Canal Station (Units 1–2), Mount Tom Station (Unit 1), Salem Harbor (Units 1, 3, and 4), and Somerset Power (Unit 8). Each of these facilities is subject to MassDEP's 310 CMR 7.29, which limits SO_2 emissions facility-wide.

Several of the Massachusetts EGUs already have installed SO_2 controls or are planning additional SO_2 controls to help them meet 310 CMR 7.29 limits. Brayton Point has installed spray dryer absorbers on Units 1 and 2 and plans to operate a dry scrubber on Unit 3 starting in 2012. Mount Tom Station has installed a dry scrubber. Salem Harbor plans to shut down all units by 2014. Somerset Power shut down in 2010. Canal Station is using lower sulfur oil to comply with 310 CMR 7.29, and will be subject to MassDEP's proposed low sulfur oil regulation.

Table 10 shows that SO_2 emissions were reduced by 72% from 2002 to 2011 at the targeted units. Additional reductions will occur in the 2012–2014 timeframe as the Salem Harbor units retire and the Brayton Unit 3 scrubber becomes operational.

TABLE 10—MASSACHUSETTS TARGETED EGUS

Facility	Unit	2002 SO_2 emissions	2011 SO_2 emissions	2018 Projected SO_2 emissions (conservative)	2018 Projected SO_2 emissions (likely)	2018 Projected SO_2 emissions (90% target)
Brayton Point	1	9,254	4,298	2,928	1,700	925
Brayton Point	2	8,853	3,535	2,783	1,590	885
Brayton Point	3	19,450	10,769	6,442	3,634	1,945
Canal Station	1	13,066	99	7,643	1,069	1,307
Canal Station	2	8,948	29	5,443	1,479	895
Mt Tom	1	5,282	129	1,571	1,033	528
Salem Harbor	1	3,425	893	0	0	343
Salem Harbor	3	4,999	2,344	0	0	500
Salem Harbor	4	2,886	69	0	0	289
Somerset	8	4,399	0	0	0	440
Total	.....	80,562	22,165	26,811	10,505	8,057
Reduction	.....	.....	59,396	53,751	70,057	72,505
Percent Reduction	.....	.....	72%	67%	87%	90%

MassDEP believes that there will be further emissions reductions at the targeted units as a result of EPA's recently issued Mercury and Air Toxics Standards (MATS) rule.[21] MATS gives coal units with scrubbers a compliance option to meet an SO_2 emissions rate of 0.2 lbs/MMBtu as an alternative to a hydrogen chloride emissions rate, which is more stringent than MassDEP's 310 CMR 7.29 annual SO_2 emissions rate (3.0 lbs/MWh, which is roughly equivalent to 0.3 lbs/MMBtu). Brayton Point and Mt. Tom Station may choose this option for their coal units, thereby further reducing their permitted SO_2 emissions.

To be subject to MATS in a given year, an EGU must fire coal or oil for more than 10 percent of the average annual heat input during the 3 previous consecutive calendar years, or for more than 15 percent of the annual heat input during any one of the 3 previous calendar years. This provision provides an incentive to Canal Unit 2, which can burn oil or natural gas, to limit the amount of oil it burns so that it is not subject to MATS, which would result in future SO_2 emissions continuing to be lower than permitted emissions. MATS also establishes work practices (versus emissions rates) for oil-fired units with

[20] See Appendix E—''Top Electrical Generating Unit List'' of the Massachusetts SIP submittal for a complete listing of the 167 stacks.

[21] *http://www.epa.gov/mats/pdfs/20111216MATSfinal.pdf.*

an annual capacity factor of less than 8% of its maximum heat input. Canal Station Unit 1's utilization was 1% in 2011, and thus has an incentive to remain below 8%, which would result in future SO_2 emissions continuing to be lower than its permitted emissions. Even without MATS, oil-fired combustion at Canal Units 1 and 2 is expected to be low well into the future because of the high cost of oil relative to natural gas. This cost differential is why Canal's utilization currently is very low.

Taking into account 310 CMR 7.29 SO_2 emission rates, permit restrictions and retirements, and MassDEP's proposed low-sulfur oil regulation, MassDEP conservatively projects SO_2 emissions in 2018 would represent at least a 67% reduction in SO_2 emissions compared to 2002 emissions.[22] However, taking into account EPA's MATS, including the SO_2 compliance option and incentives for low utilization of oil-fired units, MassDEP believes there is a likelihood that SO_2 emissions in 2018 will be up to 87% lower than 2002 emissions. Therefore, Massachusetts believes that existing regulatory programs will lead to SO_2 emission reductions that fulfill the MANE–VU Targeted EGU Strategy.

Massachusetts also notes that even the conservative projection of a 67% reduction in SO_2 emissions from the targeted EGUs is more than enough to meet the level of SO_2 emissions projected for Massachusetts EGUs which was used in the MANE–VU 2018 regional modeling, as documented in NESCAUM's 2018 Visibility Projections.[23] Emission results from the 2018 Inter-Regional Planning Organization CAIR Case Integrated Planning Model v.2.1.9 estimated 17,486 tons of SO_2 emissions for Massachusetts.[24] However, MANE–VU planners recognized that CAIR allows for emission trading. MANE–VU decided that projected emissions should be increased to represent the implementation of the strategy for the 167 stacks within the limits of CAIR program, and therefore increased the projected emissions from states subject to CAIR cap and trade. For Massachusetts, this modification resulted in projected SO_2 emission of 45,941 tons SO_2 for Massachusetts. As shown in Table 10, MassDEP's conservative 67% reduction projection for targeted EGU results in 2018 emissions of 26,811 tons SO_2,[25] well below the 45,941 tons of SO_2 that is needed to meet the modeled 2018 reasonable progress goals for the Class I areas Massachusetts affects.

c. Massachusetts Low Sulfur Fuel Oil Strategy

The MANE–VU low sulfur fuel oil strategy includes: Phase I reduction of distillate oil to 0.05% sulfur by weight (500 parts per million (ppm)) by no later than 2014; Phase II reductions of #4 residual oil to 0.25% sulfur by weight by no later than 2018; #6 residual oil to 0.5% sulfur by weight by no later than 2018; and further reduction of the sulfur content of distillate oil to 15 ppm by 2018.

The expected reduction in SO_2 emissions by 2018 from the MANE–VU ''Ask'' will yield corresponding reductions in sulfate aerosol, the main culprit in fine-particle pollution and regional haze. For Massachusetts, the MANE–VU analysis demonstrates that the reduction of the sulfur content in fuel oil will lead to an average reduction of 0.15 $\mu g/m^3$ in the 24 hour $PM_{2.5}$ concentration within the State, improving health and local visibility. In addition, the use of low sulfur fuels will result in cost savings to owners/operators of residential furnaces and boilers due to reduced maintenance costs and extended life of the units.

Massachusetts has proposed amendments to 310 CMR 7.05, ''Fuels All Districts.'' The proposed amendments limit the Statewide sulfur content of distillate oil to 500 parts per million (ppm) July 1, 2014 through June 30, 2018. Starting July 1, 2018, the sulfur content of distillate is limited to 15 ppm. The sulfur in fuel limit for No. 6 residual oil, starting July 1, 2018 is 0.5% by weight Statewide, except for the Berkshire Air Pollution Control District (APCD). The Berkshire APCD has a 1974 legislative exemption allowing sources in this district to burn up to 2.2% sulfur residual oil. Therefore, the proposed revisions do not require lower sulfur residual oil in the Berkshire APCD due to the existing law.[26] Legislative action would be needed in order for MassDEP to apply the lower sulfur residual oil limits for this district. Despite this legislative exemption, MassDEP expects that the majority of residual oil burned in the Berkshire APCD will have a reduced sulfur content because the suppliers in Massachusetts, and in the surrounding states, will need to supply lower sulfur residual oil for sale in other APCDs and states.

d. Continued Evaluation of Other Control Measures To Reduce SO_2 and NO_X Emissions

While MassDEP continues to evaluate other control measures to reduce SO_2 and NO_X emissions, Massachusetts has adopted a program to reduce wood smoke emissions from outdoor hydronic heaters (OHHs, also known as outdoor wood-fired boilers or OWBs). This regulation, 310 CMR 7.26(50)–(54), ''Outdoor Hydronic Heaters,'' was submitted as part of the December 30, 2011 SIP submittal. The regulation is based in part on a NESCAUM model rule developed in January 2007 and has requirements for manufacturers, sellers, and owners of OHHs. Manufacturers must meet performance standards in order to sell OHHs in Massachusetts. The Phase I emission standard is 0.44 lb/MMBtu for units sold after October 1, 2008, and the Phase II emission standard is 0.32 lb/MMBtu for units sold after March 31, 2010. Owners of current and new OHHs are subject to regulations regarding the operation of their OHHs. Massachusetts concludes that adoption of these regulations will reduce future smoke and particulate emissions from OHHs.

Massachusetts did not include emission reductions which result from the promulgation of the outdoor wood boilers rule in the visibility modeling to ensure reasonable progress. However, Massachusetts is including this program in its Regional Haze SIP as a SIP strengthening measure. In today's action, EPA is proposing to approve Massachusetts' 310 CMR 7.26(50)–(54), ''Outdoor Hydronic Heaters,'' and incorporating this regulation into the SIP.

EPA is also proposing to approve Massachusetts' Regional Haze SIP for the first implementation period. This includes proposed approval of Massachusetts' LTS which will allow other States to meet their respective RPGs. Massachusetts' LTS includes its Alternative to BART, expected enforceable SO_2 emission reduction in excess of modeled 2018 SO_2 emission inventories for the 167 stacks and other EGUs, Massachusetts proposed amendments to 310 CMR 7.05, ''Sulfur in Fuels'' to reduce the sulfur content of distillate and residual oils, and the

[22] The 67% projection is less than the 72% reduction already achieved in 2011 because it assumes the same unit utilization as in the 2002 baseline year, whereas the reduction achieved in 2011 is due in part to low utilization of several units, including Canal Units 1 and 2 and Mt. Tom Station.

[23] Appendix G on Massachusetts December 30, 2011 SIP submittal.

[24] Appendix W, Table 1 of the Massachusetts December 30, 2011 SIP submittal.

[25] Two additional EGUs beyond the ''167 Stack'' Targeted EGUs were projected to have 2018 SO_2 emissions totaling 3,588 tons, which would bring the total 2018 emissions to 30,399 tons, which is still well below the 45,941 tons used in the 2018 modeling.

[26] Massachusetts Chapter 353 of the Acts of 1974.

outdoor wood boiler control regulation, 310 CMR 7.26(50)-(54), ''Outdoor Hydronic Heaters.'' EPA believes that between Massachusetts' Alternative to BART and expected reductions from other programs, Massachusetts will reduce SO_2 emissions from its EGUs identified by MANE–VU as top contributors to visibility impairment below the level that MANE–VU modeled as being necessary for other States to meet their RPGs. In addition, EPA believes that SO_2 reductions from the proposed low sulfur fuel oil strategy will be comparable to modeled reductions despite the exclusion of the Berkshire APCD. Therefore, EPA does not anticipate that Massachusetts' emissions under its LTS will interfere with the ability of other States to meet their respective RPGs.

5. Additional Considerations for the LTS

In 40 CFR 51.308(d)(3)(v), States are required to consider the following factors in developing the long term strategy:

a. Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment;

b. Measures to mitigate the impacts of construction activities;

c. Emission limitations and schedules for compliance to achieve the reasonable progress goal;

d. Source retirement and replacement schedules;

e. Smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the State for these purposes;

f. Enforceability of emissions limitations and control measures; and

g. The anticipated net effect on visibility due to projected changes in point area, and mobile source emissions over the period addressed by the long term strategy.

a. Emission Reductions Including RAVI

Since Massachusetts does not contain any Class I areas, the State is not required to address RAVI, nor has any Massachusetts source been identified as subject to RAVI. A list of Massachusetts' ongoing air pollution control programs is included in Section III.C.1.

b. Construction Activities

The Regional Haze Rule requires Massachusetts to consider measures to mitigate the impacts of construction activities on regional haze. MANE–VU's consideration of control measures for construction activities is documented in *Technical Support Document on Measures to Mitigate the Visibility Impacts of Construction Activities in the MANE–VU Region,* Draft, October 20, 2006.[27]

The construction industry is already subject to requirements for controlling pollutants that contribute to visibility impairment. For example, federal regulations require the reduction of SO_2 emissions from construction vehicles. At the State level, Massachusetts regulation 310 CMR 7.09 regulates dust from construction and demolition activities. 7.09(3) states, ''No person shall cause, suffer, allow, or permit a building, road, driveway, or open area to be constructed, used, repaired, or demolished without applying such reasonable measures as may be necessary to prevent particulate matter from becoming air-borne that may cause or contribute to a condition of air pollution.'' See 37 FR 23085, (October 28, 1972.)

MANE–VU's Contribution Report found that, from a regional haze perspective, crustal material generally does not play a major role. On the 20 percent best-visibility days during the 2000–2004 baseline period, crustal material accounted for 6 to 11 percent of the particle-related light extinction at the MANE–VU Class I Areas. On the 20 percent worst-visibility days, however, the contribution was reduced to 2 to 3 percent. Furthermore, the crustal fraction is largely made up of pollutants of natural origin (e.g., soil or sea salt) that are not targeted under the Regional Haze Rule. Nevertheless, the crustal fraction at any given location can be heavily influenced by the proximity of construction activities; and construction activities occurring in the immediate vicinity of MANE–VU Class I area could have a noticeable effect on visibility.

For this regional haze SIP, Massachusetts concluded that its current regulations are currently sufficient to mitigate the impacts of construction activities. Any future deliberations on potential control measures for construction activities and the possible implementation will be documented in the first regional haze SIP progress report in 2014. EPA proposes to find that Massachusetts has adequately addressed measures to mitigate the impacts of construction activities.

c. Emission Limitations and Schedules for Compliance To Achieve the RPG

In addition to the existing CAA control requirements discussed in section III.C.1, Massachusetts has adopted a low sulfur fuel oil strategy consistent with the MANE–VU ''Ask'' as discussed in Section III.C.4. EPA proposes to find that Massachusetts has adequately addressed emissions limitations and schedules for compliance.

d. Source Retirement and Replacement Schedule

Pursuant to 40 CFR 51.308(d)(3)(v)(D) of the Regional Haze Rule, Massachusetts is required to consider source retirement and replacement schedules in developing the long term strategy. Source retirement and replacement were considered in developing the 2018 emissions. However, no additional sources beyond those already discussed have been identified by Massachusetts. EPA proposes to find that Massachusetts has adequately addressed source retirement and replacement schedules.

e. Smoke Management Techniques

The Regional Haze Rule requires States to consider smoke management techniques related to agricultural and forestry management in developing the long-term strategy. MANE–VU's analysis of smoke management in the context of regional haze is documented in *Technical Support Document on Agricultural and Smoke Management in the MANE–VU Region,* September 1, 2006, (hereinafter referred to as the ''Smoke TSD'').[28]

Massachusetts does not have a formal smoke management program (SMP). SMPs are required only when smoke impacts from fires managed for resources benefits contribute significantly to regional haze. The emissions inventory presented in the Smoke TSD indicates that agricultural, managed, prescribed, and open burning emissions are very minor; the inventory estimates that, in Massachusetts, those emissions from those source categories totaled 414.2 tons of PM_{10} and 270.4 tons of $PM_{2.5}$ in 2002, which constitute 0.2% and 0.5% of the total inventory for these pollutants, respectively.

Source apportionment results show that wood smoke is a moderate contributor to visibility impairment at some Class I areas in the MANE–VU region; however, smoke is not a large contributor to haze in MANE–VU Class I areas on either the 20% best or 20% worst visibility days. Moreover, most of wood smoke is attributable to residential wood combustion. Therefore, it is unlikely that fires for agricultural or forestry management cause large

[27] This document has been provided as part of the docket to this proposed rulemaking.

[28] This document has been included as part of the docket to this proposed rulemaking.

impacts on visibility in any of the Class I areas in the MANE–VU region. On rare occasions, smoke from major fires degrades air quality and visibility in the MANE–VU area. However, these fires are generally unwanted wildfires that are not subject to SMPs. EPA proposes to approve Massachusetts' decision that an Agricultural and Forestry Smoke Management Plan to address visibility impairment is not required at this time.

f. Enforceability of Emission Limitations and Control Measures

Massachusetts has asked, and we are proposing to process approval of 310 CMR 7.29, 310 CMR 7.05, and 310 CMR 7.26(50) in parallel with the approval of Massachusetts' Regional Haze SIP. Massachusetts indicated that they plan to have the final supplemental SIP revision by July 2012, prior to the finalization of this action. EPA will review the final SIP supplement and determine whether it differs significantly from the February 17, 2012 proposal. At the same time we take final action on Massachusetts' Regional Haze SIP, we will then take final action on 310 CMR 7.29, 310 CMR 7.05, and 310 CMR 7.26(50)–(54) as well as on several ECPs discussed in the BART section. Upon EPA final action, these requirements and associated emission limitations included as part of the Massachusetts Regional Haze SIP, will become federally enforceable. EPA is proposing to find that Massachusetts has adequately addressed the enforceability of emission limitations and control measures.

g. The Anticipated Net Effect on Visibility

MANE–VU used the best and final emission inventory to model progress expected toward the goal of natural visibility conditions for the first regional haze planning period. All of the MANE–VU Class I areas are expected to achieve greater progress toward the natural visibility goal than the uniform rate of progress, or the progress expected by extrapolating a trend line from current visibility conditions to natural visibility conditions.[29]

In summary, EPA is proposing to find that Massachusetts has adequately addressed the LTS regional haze requirements.

[29] Projected visibility improvements for each MANE–VU Class I area can be found in the NESCAUM document dated May 13, 2008, ''2018 Visibility Projections'' (*www.nescaum.org/documents/2018-visibility-projections-final-05-13-08.pdf/*)

D. Consultation With States and Federal Land Managers

On May 10, 2006, the MANE–VU State Air Directors adopted the Inter-RPO State/Tribal and FLM Consultation Framework that documented the consultation process within the context of regional phase planning, and was intended to create greater certainty and understanding among RPOs. MANE–VU States held ten consultation meetings and/or conference calls from March 1, 2007 through March 21, 2008. In addition to MANE–VU members attending these meetings and conference calls, participants from the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) RPO, Midwest RPO, and the relevant Federal Land Managers were also in attendance. In addition to the conference calls and meeting, the FLMs were given the opportunity to review and comment on each of the technical documents developed by MANE–VU.

On November 21, 2008 and July 31, 2009, Massachusetts submitted a draft Regional Haze SIP to the relevant FLMs for review and comment pursuant to 40 CFR 51.308(i)(2). The FLMs provided comments on the draft Regional Haze SIP in accordance with 40 CFR 51.308(i)(3). The comments received from the FLMs were addressed and incorporated in Massachusetts' SIP revision. Most of the comments were requests for additional detail as to various aspects of the SIP. These comments and Massachusetts' response to comments can be found in the docket for this proposed rulemaking.

On January 11, 2011, Massachusetts proposed its Regional Haze SIP for public hearing. Comments were received from U.S. EPA, the National Park Service, the U.S. Department of Agriculture, Conservation Law Foundation, Wheelabrator, Massachusetts Petroleum Council, and Massachusetts Oil Heat Council.[30] On February 17, 2012, MassDEP proposed revisions to the Massachusetts Regional Haze SIP for public hearing. Comments were received from U.S. EPA, the National Park Service, and the Sierra Club. To address the requirement for continuing consultation procedures with the FLMs under 40 CFR 51.308(i)(4), Massachusetts commits in its SIP to ongoing consultation with the FLMs on emission strategies, major new source permits, assessments or rulemaking concerning sources identified as probable contributors to visibility impairment, any changes to the monitoring strategy, work on the periodic revisions to the SIP, and ongoing communications regarding visibility impairment.

EPA is proposing to find that Massachusetts has addressed the requirements for consultation with the Federal Land Managers.

[30] The comments and MassDEP's responses have been included in the docket.

E. Periodic SIP Revisions and Five-Year Progress Reports

Consistent with the requirements of 40 CFR 51.308(g), Massachusetts has committed to submitting a report on reasonable progress (in the form of a SIP revision) to the EPA every five years following the initial submittal of its regional haze SIP. The reasonable progress report will evaluate the progress made towards the RPGs for the MANE–VU Class I areas, located in Maine, New Hampshire, Vermont, and New Jersey.

Pursuant to 40 CFR 51.308(f), Massachusetts is required to submit periodic revisions to its Regional Haze SIP by July 31, 2018, and every ten years thereafter. Massachusetts acknowledges and agrees to comply with this schedule.

Pursuant to 40 CFR 51.308(d)(4)(v), Massachusetts will also make periodic updates to the State's emissions inventory. Massachusetts proposes to complete these updates to coincide with the progress reports. Actual emissions will be compared to projected modeled emissions in the progress reports.

Lastly, pursuant to 40 CFR 51.308(h), Massachusetts will submit a determination of adequacy of its regional haze SIP revision whenever a progress report is submitted. Massachusetts' regional haze SIP states that, depending on the findings of its five-year review, Massachusetts will take one or more of the following actions at that time, whichever actions are appropriate or necessary:

- If Massachusetts determines that the existing State Implementation Plan requires no further substantive revision in order to achieve established goals for visibility improvement and emissions reductions, Massachusetts will provide to the EPA Administrator a negative declaration that further revision of the existing plan is not needed.
- If Massachusetts determines that its implementation plan is or may be inadequate to ensure reasonable progress as a result of emissions from sources in one or more other State(s) which participated in the regional planning process, Massachusetts will provide notification to the EPA Administrator and to those other State(s). Massachusetts will also collaborate with the other State(s) through the regional planning process

for the purpose of developing additional strategies to address any such deficiencies in Massachusetts' plan.

• If Massachusetts determines that its implementation plan is or may be inadequate to ensure reasonable progress as a result of emissions from sources in another country, Massachusetts will provide notification, along with available information, to the EPA Administrator.

• If Massachusetts determines that the implementation plan is or may be inadequate to ensure reasonable progress as a result of emissions from sources within the State, Massachusetts will revise its implementation plan to address the plan's deficiencies within one year from this determination.

IV. What action is EPA proposing to take?

EPA is proposing approval of Massachusetts' December 30, 2011 SIP revision and February 17, 2012 proposed regional haze SIP revision supplement, as meeting the applicable requirements of the Regional Haze Rule found in 40 CFR 51.308. EPA is proposing to approve 310 CMR 7.29 ''Emission Standards for Power Plants,'' 310 CMR 7.26(50)–(54) ''Outdoor Hydronic Heaters,'' Amended Emission Control Plan for Mt. Tom Station dated May 15, 2009, Facility Shutdown of Somerset Power, LLC dated June 22, 2011, Modified Emission Control Plan for General Electric Aviation—Lynn dated March 24, 2011, and Modified Emission Control Plan for Wheelabrator Saugus, Inc. dated March 14, 2012. Pursuant to MassDEP's May 2, 2012 request for parallel processing, EPA is proposing approval of Massachusetts' proposed 310 CMR 7.00 ''Definitions,'' 310 CMR 7.05 ''Fuels All Districts,'' proposed Amended Emission Control Plan Approval for Salem Harbor Station dated February 17, 2012, and proposed Amended Emission Control Plan Approval for Brayton Point Station dated February 16, 2012. Under this procedure, EPA prepared this action before the State's final adoption of these regulations and ECPs. Massachusetts has already held a public hearing on the proposed regulations and received public comment. Massachusetts may revise the regulations and ECPs in response to comments. After Massachusetts submits its final adopted supplemental SIP revision, EPA will review this submittal to determine whether it is significantly different from the proposal. EPA will determine whether it is appropriate to approve the final rules and ECPs with a description of any changes since the proposal, re-propose action based on the final adopted regulations, or take other action as appropriate.

V. Statutory and Executive Order Reviews

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

• Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

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

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: May 14, 2012.

Ira W. Leighton,

Acting Regional Administrator, EPA Region 1.

[FR Doc. 2012–12640 Filed 5–23–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2011–0400; FRL–9676–2]

Approval and Promulgation of State Implementation Plans; State of Wyoming; Regional Haze Rule Requirements for Mandatory Class I Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Wyoming State Implementation Plan (SIP) revisions submitted on January 12, 2011 and April 19, 2012 that address regional haze. These SIP revisions were submitted to address the requirements of the Clean Air Act (CAA or Act) and our rules that require states to prevent any future and remedy any existing man-made impairment of visibility in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA is taking this action pursuant to section 110 of the CAA.

DATES: Comments must be received on or before July 23, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2011–0400, by one of the following methods:

• *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

- *Email: r8airrulemakings@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2011–0400. 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 *http://www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly-available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–6144, *dygowski.laurel@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

i. The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

ii. The initials *BART* mean or refer to Best Available Retrofit Technology.

iii. The initials *CAC* mean or refer to clean air corridors.

iv. The initials *CEED* mean or refer to the Center for Energy and Economic Development.

v. The initials *EC* mean or refer to elemental carbon.

vi. The initials *EGUs* mean or refer to electric generating units.

vii. The initials *EATS* mean or refer to Emissions and Allowance Tracking System

viii. The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

ix. The initials *FETS* mean or refer to the Fire Emission Tracking System.

x. The initials *GCVTC* mean or refer to the Grand Canyon Visibility Transport Commission.

xi. The initials *IMPROVE* mean or refer to Interagency Monitoring of Protected Visual Environments monitoring network.

xii. The initials *MRR* mean or refer to monitoring, recordkeeping, and reporting.

xiii. The initials NO_X mean or refer to nitrogen oxides.

xiv. The initials *OC* mean or refer to organic carbon.

xv. The initials $PM_{2.5}$ mean or refer to particulate matter with an aerodynamic diameter of less than 2.5 micrometers.

xvi. The initials PM_{10} mean or refer to particulate matter with an aerodynamic diameter of less than 10 micrometers.

xvii. The initials *RHR* mean or refer to the Regional Haze Rule.

xviii. The initials *RMC* mean or refer to the Regional Modeling Center.

xix. The initials *RPO* mean or refer to regional planning organization.

xx. The initials *SIP* mean or refer to State Implementation Plan.

xxi. The initials SO_2 mean or refer to sulfur dioxide.

xxii. The initials *TSA* mean or refer to the tracking system administrator.

xxiii. The initials *TSD* mean or refer to Technical Support Document.

xxiv. The initials *VOC* mean or refer to volatile organic compounds.

xxv. The initials *WAQSR* mean or refer to Wyoming Air Quality Standards and Regulations.

xxvi. The initials *WRAP* mean or refer to the Western Regional Air Partnership.

xxvii. The words *Wyoming* and *State* mean or refer to the State of Wyoming.

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I. General Information

A. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA through *http://www.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:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. 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.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

B. Overview of Proposed Action

In this action, EPA is proposing to approve Wyoming SIP revisions submitted on January 12, 2011 and April 19, 2012 that address the regional haze rule (RHR) for the mandatory Class I areas under 40 CFR 51.309. EPA is proposing that the January 12, 2011 and April 19, 2012 SIPs meet the requirements of 40 CFR 51.309, with the exception of 40 CFR 51.309(d)(4)(vii), and 40 CFR 51.309(g), as explained below.

As part of the January 12, 2011 and April 19, 2012 SIPs, the State submitted revisions to the Wyoming Air Quality Standards and Regulations (WAQSR). The State submitted WAQSR Chapter 14, Sections 2 and 3—*Emission Trading Program Regulations.* WAQSR Chapter 14, in conjunction with the SIP, implements the backstop trading program provisions in accordance with the applicable requirements of 40 CFR 51.308 and 40 CFR 51.309. We are proposing to approve WAQSR Chapter 14, Section 2 and Section 3. The State also submitted WAQSR Chapter 10, Section 4—*Smoke Management.* WAQSR Chapter 10, Section 4, in conjunction with the SIP, implements the requirements for smoke management under 40 CFR 51.309(d)(6). We are proposing to approve WAQSR Chapter 10, Section 4.

The State's submitted another SIP revision dated January 12, 2011 that addresses the requirements under 40 CFR 51.309(d)(4)(vii) and 40 CFR 51.309(g) pertaining to best available retrofit technology (BART) for particulate matter (PM) and nitrogen oxides (NO_X) and additional Class I areas, respectively. EPA will be taking action on this SIP at a later date. In addition, the January 12, 2011 and April 19, 2012 submittals we are proposing to act on in this notice supersede and replace regional haze SIPs submitted on December 24, 2003, May 27, 2004, and November 21, 2008.

As explained in further detail below, 40 CFR 51.309 (section 309) allows western states an optional way to fulfill the RHR requirements as opposed to adopting the requirements under 40 CFR 51.308. Three states have elected to submit a SIP under 40 CFR 51.309. Those states are Wyoming, Utah, and New Mexico.[1] In this action, EPA is proposing to approve the Wyoming section 309 SIP submittal. As required by 40 CFR 51.309, the participating states must adopt a trading program, or what has been termed the Western Backstop Sulfur Dioxide Trading Program (backstop trading program or trading program). The 309 backstop trading program will not be effective

[1] In addition to the SIP submittals from the three states, Albuquerque/Bernalillo County in New Mexico must also submit a Section 309 RH SIP to completely satisfy the requirements of section 110(a)(2)(D) of the CAA for the entire State of New Mexico under the New Mexico Air Quality Control Act (section 74–2–4). Albuquerque submitted its regional haze SIP to EPA on June 8, 2011. When we refer to New Mexico in this notice, we are also referring to Albuquerque/Bernalillo County.

until EPA has finalized action on all section 309 SIPs as the program is dependent on the participation of the three states. Utah submitted its 309 SIP to EPA on May 26, 2011 and New Mexico submitted its 309 SIP to EPA on June 30, 2011. EPA will be taking action on Utah and New Mexico's 309 SIPs separately. If EPA takes action approving the necessary components of the 309 backstop trading program to operate in all of the jurisdictions electing to submit 309 SIPs, the trading program will become effective.

II. Background Information

A. Regional Haze

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles ($PM_{2.5}$) (e.g., sulfates, nitrates, organic carbon (OC), elemental carbon (EC), and soil dust), and their precursors (e.g., SO_2, NO_X, and in some cases, ammonia (NH_3) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form $PM_{2.5}$, which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range [2] in many Class I areas (i.e., national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the western United States is 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. 64 FR 35715 (July 1, 1999).

B. Requirements of the CAA and EPA's Regional Haze Rule

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas [3] which impairment results from manmade air pollution.'' On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, i.e., ''reasonably attributable visibility impairment.'' 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999. 64 FR 35714 (July 1, 1999, codified at 40 CFR part 51, subpart P). The RHR revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements under 40 CFR 51.309 are summarized in sections III and IV of this preamble. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia and the Virgin Islands. 40 CFR 51.308(b) and 40 CFR 51.309(c) require states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.[4]

Few states submitted a regional haze SIP prior to the December 17, 2007 deadline, and on January 15, 2009, EPA found that 37 states, including Wyoming and the District of Columbia, and the Virgin Islands, had failed to submit SIPs addressing the regional haze requirements. 74 FR 2392. Once EPA has found that a state has failed to make a required submission, EPA is required to promulgate a FIP within two years unless the state submits a SIP and the Agency approves it within the two year period. CAA § 110(c)(1).

C. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program will require long-term regional coordination among states, tribal governments and various federal agencies. As noted above, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to effectively address the problem of visibility impairment in Class I areas, states need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, EPA has encouraged the states and tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their states and tribes impact Class I areas across the country, and then pursued the development of regional strategies to reduce emissions of PM and other pollutants leading to regional haze.

The Western Regional Air Partnership (WRAP) RPO is a collaborative effort of state governments, tribal governments, and various federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the western United States. WRAP member state governments include: Alaska, Arizona, California, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and

[2] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

[3] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

[4] EPA's regional haze regulations require subsequent updates to the regional haze SIPs. 40 CFR 51.308(g)–(i).

Wyoming. Tribal members include Campo Band of Kumeyaay Indians, Confederated Salish and Kootenai Tribes, Cortina Indian Rancheria, Hopi Tribe, Hualapai Nation of the Grand Canyon, Native Village of Shungnak, Nez Perce Tribe, Northern Cheyenne Tribe, Pueblo of Acoma, Pueblo of San Felipe, and Shoshone-Bannock Tribes of Fort Hall.

D. Development of the Requirements for 40 CFR 51.309

EPA's RHR provides two paths to address regional haze. One is 40 CFR 51.308, requiring states to perform individual point source BART determinations and evaluate the need for other control strategies. These strategies must be shown to make ''reasonable progress'' in improving visibility in Class I areas inside the state and in neighboring jurisdictions. The other method for addressing regional haze is through 40 CFR 51.309, and is an option for nine states termed the ''Transport Region States'' which include: Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming, and the 211 tribes located within those states. By meeting the requirements under 40 CFR 51.309, states are making reasonable progress toward the national goal of achieving natural visibility conditions for the 16 Class I areas on the Colorado Plateau.

Section 309 requires participating states to adopt regional haze strategies that are based on recommendations from the Grand Canyon Visibility Transport Commission (GCVTC) for protecting the 16 Class I areas on the Colorado Plateau.[5] The EPA established the GCVTC on November 13, 1991. The purpose of the GCVTC was to assess information about the adverse impacts on visibility in and around the 16 Class I areas on the Colorado Plateau and to provide policy recommendations to EPA to address such impacts. Section 169B of the CAA called for the GCVTC to evaluate visibility research, as well as other available information, pertaining to adverse impacts on visibility from potential or projected growth in emissions from sources located in the region. The GCVTC determined that all transport region states could potentially impact the Class I areas on the Colorado Plateau. The GCVTC submitted a report to EPA in 1996 with its policy recommendations for protecting visibility for the Class I areas on the Colorado Plateau. Provisions of the 1996 GCVTC report include: strategies for addressing smoke emissions from wildland fires and agricultural burning; provisions to prevent pollution by encouraging renewable energy development; and provisions to manage clean air corridors (CACs), mobile sources, and wind-blown dust, among other things. The EPA codified these recommendations as part of the 1999 RHR. 64 FR 35714 (July 1, 1999).

EPA determined that the GCVTC strategies would provide for reasonable progress in mitigating regional haze if supplemented by an annex containing quantitative emission reduction milestones and provisions for a trading program or other alternative measure (64 FR 35749 and 35756). Thus, the 1999 RHR required that western states submit an annex to the GCVTC report with quantitative milestones and detailed guidelines for an alternative program in order to establish the GCVTC recommendations as an alternative approach to fulfilling the section 308 requirements for compliance with the RHR. In September 2000, the WRAP, which is the successor organization to the GCVTC, submitted an annex to EPA. The annex contained SO_2 emission reduction milestones and the detailed provisions of a backstop trading program to be implemented automatically if voluntary measures failed to achieve the SO_2 milestones. EPA codified the annex on June 5, 2003 at 40 CFR 51.309(h). 68 FR 33764.

Five western states submitted implementation plans under section 309 in 2003. EPA was challenged by the Center for Energy and Economic Development (CEED) on the validity of the annex provisions. In *CEED* v. *EPA,* the DC Circuit vacated EPA's approval of the WRAP annex (*Center for Energy and Economic Development* v. *EPA,* No. 03–1222 (DC Cir. Feb. 18, 2005)). In response to the court's decision, EPA vacated the annex requirements adopted as 40 CFR 51.309(h), but left in place the stationary source requirements in 40 CFR 51.309(d)(4). 71 FR 60612. The requirements under 40 CFR 51.309(d)(4) contain general requirements pertaining to stationary sources and market trading, and allow states to adopt alternatives to the point source application of BART.

III. Requirements for Regional Haze SIPs Submitted Under 40 CFR 51.309

The following is a summary and basic explanation of the regulations covered under section 51.309 of the RHR. See 40 CFR 51.309 for a complete listing of the regulations under which this SIP was evaluated.

A. Projection of Visibility Improvement

For each of the 16 Class I areas located on the Colorado Plateau, the SIP must include a projection of the improvement in visibility expressed in deciviews. 40 CFR 51.309(d)(2). The RHR establishes the deciview as the principal metric or unit for expressing visibility. *See* 70 FR 39104, 39118. This visibility metric expresses uniform changes in the degree of haze in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility expressed in deciviews is determined by using air quality measurements to estimate light extinction and then transforming the value of light extinction using a logarithm function. The deciview is a more useful measure for tracking progress in improving visibility than light extinction itself because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one deciview.[6] States need to show the projected visibility improvement for the best and worst 20 percent days through the year 2018, based on the application of all section 309 control strategies.

B. Clean Air Corridors (CACs)

Pursuant to 40 CFR 51.309(d)(3), states must identify CACs. CACs are geographic areas located within transport region states that contribute to the best visibility days (least impaired) in the 16 Class I areas on the Colorado Plateau. The CAC as described in the 1996 GCVTC report covers nearly all of Nevada, large portions of Oregon, Idaho, and Utah, and encompasses several Indian nations. In order to meet the RHR requirements for CACs, states must adopt a comprehensive emissions tracking program for all visibility impairing pollutants within the CAC. Based on the emissions tracking, states must identify overall emissions growth or specific areas of emissions growth in and outside of the CAC that could be significant enough to result in visibility impairment at one or more of the 16 Class I areas. If there is visibility

[5] The Colorado Plateau is a high, semi-arid tableland in southeast Utah, northern Arizona, northwest New Mexico, and western Colorado. The 16 mandatory Class I areas are as follows: Grand Canyon National Park, Mount Baldy Wilderness, Petrified Forest National Park, Sycamore Canyon Wilderness, Black Canyon of the Gunnison National Park Wilderness, Flat Tops Wilderness, Maroon Bells Wilderness, Mesa Verde National Park, Weminuche Wilderness, West Elk Wilderness, San Pedro Parks Wilderness, Arches National Park, Bryce Canyon National Park, Canyonlands National Park, Capital Reef National Park, and Zion National Park.

[6] The preamble to the RHR provides additional details about the deciview. 64 FR 35714, 35725 (July 1, 1999).

impairment in the CAC, states must conduct an analysis of the potential impact in the 16 Class I areas and determine if additional emission control measures are needed and how these measures would be implemented. States must also indicate in their SIP if any other CACs exist, and if others are found, provide necessary measures to protect against future degradation of visibility in the 16 Class I areas.

C. Stationary Source Reductions

1. Sulfur Dioxide Emission Reductions

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address their visibility impacts. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate BART as determined by the state. Under the RHR, states are directed to conduct BART determinations for such ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area.

Rather than requiring source-specific BART controls, states have the flexibility under section 309 to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress than would be achieved by the application of BART pursuant to 40 CFR 51.309(e)(2). Under 40 CFR 51.309, states can satisfy the section 308 SO_2 BART requirements by adopting SO_2 emission milestones and a backstop trading program. 40 CFR 51.309(d)(4). Under this approach, states must establish declining SO_2 emission milestones for each year of the program through 2018. The milestones must be consistent with the GCTVC's goal of 50 to 70 percent reduction in SO_2 emissions by 2040. If the milestones are exceeded in any year, the backstop trading program is triggered.

Pursuant to 40 CFR 51.309(d)(4)(ii)-(iv), states must include requirements in the SIP that allow states to determine whether the milestone has been exceeded. These requirements include documentation of the baseline emission calculation, monitoring, recordkeeping, and reporting (MRR) of SO_2 emissions, and provisions for conducting an annual evaluation to determine whether the milestone has been exceeded. SIPs must also contain requirements for implementing the backstop trading program in the event that the milestone is exceeded and the program is triggered. 40 CFR 51.309(d)(4)(v).

The WRAP, in conjunction with EPA, developed a model for a backstop trading program. In order to ensure consistency between states, states opting to participate in the 309 program need to adopt rules that are substantively equivalent to the model rules for the backstop trading program to meet the requirements of 40 CFR 51.309(d)(4). The trading program must also be implemented no later than 15 months after the end of the first year that the milestone is exceeded, require that sources hold allowances to cover their emissions, and provide a framework, including financial penalties, to ensure that the 2018 milestone is met.

2. Provisions for Stationary Source Emissions of Nitrogen Oxides and Particulate Matter

Pursuant to 40 CFR 51.309(d)(4)(vii), a section 309 SIP must contain any necessary long term strategies and BART requirements for PM and NO_X. Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources[7] built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' as determined by the state.

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at appendix Y to 40 CFR part 51 (hereinafter referred to as the ''BART Guidelines'') to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. 70 FR 39104. In making a BART determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts (MW), a state must use the approach set forth in the BART Guidelines. A state is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources. Regardless of source size or type, a state must meet the requirements of the CAA and our regulations for selection of BART, and the state's BART analysis and determination must be reasonable in light of the overarching purpose of the regional haze program.

The process of establishing BART emission limitations can be logically broken down into three steps: first, states identify those sources which meet the definition of ''BART-eligible source'' set forth in 40 CFR 51.301[8]; second, states determine which of such sources ''emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area'' (a source which fits this description is ''subject-to-BART''); and third, for each source subject-to-BART, states then identify the best available type and level of control for reducing emissions.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are SO_2, NO_X, and PM. EPA has stated that states should use their best judgment in determining whether VOC or NH_3 compounds impair visibility in Class I areas.

Under the BART Guidelines, states may select an exemption threshold value for their BART modeling, below which a BART-eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Any exemption threshold set by the state should not be higher than 0.5 deciview. 40 CFR part 51, appendix Y, section III.A.1.

In their SIPs, states must identify the sources that are subject-to-BART and document their BART control determination analyses for such sources. In making their BART determinations, section 169A(g)(2) of the CAA requires that states consider the following factors

[7] The set of ''major stationary sources'' potentially subject-to-BART is listed in CAA section 169A(g)(7).

[8] BART-eligible sources are those sources that have the potential to emit 250 tons or more of a visibility-impairing air pollutant, were not in operation prior to August 7, 1962, but were in existence on August 7, 1977, and whose operations fall within one or more of 26 specifically listed source categories. 40 CFR 51.301.

when evaluating potential control technologies: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

A regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject-to-BART. Once a state has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the regional haze SIP. CAA section 169(g)(4) and 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to MRR for the BART controls on the source. *See* CAA section 110(a). As noted above, the RHR allows states to implement an alternative program in lieu of BART so long as the alternative program can be demonstrated to achieve greater reasonable progress toward the national visibility goal than would BART.

D. Mobile Sources

Under 40 CFR 51.309(d)(5), states must provide inventories of on-road and non-road mobile source emissions of VOCs, NO_X, SO_2, $PM_{2.5}$, EC, and OC for the years 2003, 2008, 2013, and 2018. The inventories must show a continuous decline in total mobile source emissions of each of the above pollutants. If the inventories show a continuous decline in total mobile source emissions of each of these pollutants over the period 2003–2018, a state is not required to take further action in their SIP. If the inventories do not show a continuous decline in mobile source emissions of one or more of these pollutants over the period 2003–2018, a state must submit a SIP that contains measures that will achieve a continuous decline.

The SIP must also contain any long-term strategies necessary to reduce emissions of SO_2 from non-road mobile sources, consistent with the goal of reasonable progress. In assessing the need for such long-term strategies, the state may consider emissions reductions achieved or anticipated from any new federal standards for sulfur in non-road diesel fuel. Section 309 SIPs must provide an update on any additional mobile source strategies implemented within the state related to the GCVTC 1996 recommendations on mobile sources.

E. Programs Related to Fire

Pursuant to 40 CFR 51.309(d)(6), SIPs must contain requirements for programs related to fire. The SIP must show that the state's smoke management program, and all federal or private programs for prescribed fire in the state, have a mechanism in place for evaluating and addressing the degree of visibility impairment from smoke in their planning and application of burning. The state must also ensure that its prescribed fire smoke management programs have at least the following seven elements: (1) Actions to minimize emissions; (2) evaluation of smoke dispersion; (3) alternatives to fire; (4) public notification; (5) air quality monitoring; (6) surveillance and enforcement; and (7) program evaluation. The state must be able to track statewide emissions of VOC, NO_X, EC, OC, and $PM_{2.5}$ emissions from prescribed burning in its state.

Other requirements states must meet in their 309 plan related to fire include the adoption of a statewide process for gathering post-burn activity information to support emissions inventory and tracking systems. States must identify existing administrative barriers to the use of non-burning alternatives and adopt a process for continuing to identify and remove administrative barriers where feasible. The SIP must include an enhanced smoke management program that considers visibility effects in addition to health objectives and is based on the criteria of efficiency, economics, law, emission reduction opportunities, land management objectives, and reduction of visibility impairment. Finally, a state must establish annual emission goals to minimize emission increases from fire.

F. Paved and Unpaved Road Dust

Under 40 CFR 51.309(d)(7), states must submit a SIP that assesses the impact of dust emissions on regional haze in the 16 Class I areas on the Colorado Plateau and to include a projection of visibility conditions through 2018 for the least and most impaired days. If dust emissions are determined to be a significant contributor to visibility impairment, the state must include emissions management strategies in the SIP to address their impact.

G. Pollution Prevention

The requirements under the RHR for pollution prevention only require the state to provide an assessment of the energy programs as outlined in 40 CFR 51.309(d)(8) and does not require a state to adopt any specific energy-related strategies or regulations for regional haze. In order to meet the requirements related to pollution prevention, the state's plan must include an initial summary of all pollution prevention programs currently in place, an inventory of all renewable energy generation capacity and production in use or planned as of the year 2002, the total energy generation capacity and production for the state, and the percent of the total that is renewable energy.

The state's plan must include a discussion of programs that provide incentives for efforts that go beyond compliance and/or achieve early compliance with air-pollution related requirements and programs to preserve and expand energy conservation efforts. The state must identify specific areas where renewable energy has the potential to supply power where it is now lacking and where renewable energy is most cost-effective. The state must include projections of the short and long-term emissions reductions, visibility improvements, cost savings, and secondary benefits associated with renewable energy goals, energy efficiency, and pollution prevention activities. The state must also provide its anticipated contribution toward the GCVTC renewable energy goals for 2005 and 2015. The GCVTC goals are that renewable energy will comprise 10 percent of the regional power needs by 2005 and 20 percent by 2015.

H. Additional Recommendations

Section 309 requires states to determine if any of the other recommendations not codified by EPA as part of 40 CFR 51.309, should be implemented in their SIP. 40 CFR 51.309(d)(9). States are not required to adopt any additional control measures unless the state determines they are appropriate and can be practicably included as enforceable measures to remedy regional haze in the 16 Class I areas. Any measures adopted by a state would need to be enforceable. States must also submit a report to EPA and the public in 2013 and 2018 showing there has been an evaluation of the additional recommendations and the progress toward developing and implementing any such recommendations.

I. Periodic Implementation Plan Revisions

Under 40 CFR 51.309(d)(10), states must submit progress reports in the form of SIP revisions in 2013 and 2018. The SIP revisions must comply with the procedural requirements of 40 CFR

51.102 for public hearings and 40 CFR 51.103 for submission of plans. The assessment in the progress report must include an evaluation of Class I areas located within the state and Class I areas outside the state that are affected by emissions from the state. EPA views these SIP revisions as a periodic check on progress, rather than a thorough revision of regional strategies. The state should focus on significant shortcomings of the original SIP from sources that were not fully accounted for or anticipated when the SIP was initially developed. The specifics of what each progress report must contain can be found at 40 CFR 51.509(d)(10)(i)(A)–(G).

At the same time that the state submits its progress report to EPA, it must also take an action based on the outcome of the assessment in the report. If the assessment shows that the SIP is adequate and requires no substantive revision, the state must submit to EPA a ''negative declaration'' statement saying that no further SIP revisions are necessary at this time. If the assessment shows that the SIP is or may be inadequate due to emissions from outside the state, the state must notify EPA and other regional planning states and work with them to develop additional control strategies. If the assessment shows that the SIP is or may be inadequate due to emissions from another country, the state must include appropriate notification to EPA in its SIP revision. In the event the assessment shows that the SIP is or may be inadequate due to emissions from within the state, the state shall develop additional strategies to address the deficiencies and revise the SIP within one year from the due date of the progress report.

J. Interstate Coordination

In complying with the requirements of 40 CFR 51.309(d)(11), states may include emission reductions strategies that are based on coordinated implementation with other states. The SIP must include documentation of the technical and policy basis for the individual state apportionment (or the procedures for apportionment throughout the trans-boundary region), the contribution addressed by the state's plan, how it coordinates with other state plans, and compliance with any other appropriate implementation plan approvability criteria. States may rely on the relevant technical, policy, and other analyses developed by a regional entity, such as the WRAP in providing such documentation.

IV. Additional Requirements for Alternative Programs Under the Regional Haze Rule

States opting to submit an alternative program, such as the backstop trading program under section 309, must also meet requirements under 40 CFR 51.308(e)(2) and (e)(3). These requirements for alternative programs relate to the ''better-than-BART'' test and fundamental elements of any alternative program that establishes a cap on emissions.

A. ''Better-Than-BART'' Demonstration

In order to demonstrate that the alternative program achieves greater reasonable progress than source-specific BART, states must provide a demonstration in their SIP that meets the requirements in 40 CFR 51.308(e)(2)(i)–(v). States submitting section 309 SIPs or other alternative programs are required to list all BART-eligible sources and categories covered by the alternative program. States are then required to determine which BART-eligible sources are ''subject-to-BART.'' The SIP must provide an analysis of the best system of continuous emission control technology available and the associated reductions for each source subject-to-BART covered by the alternative program, or what is termed a ''BART benchmark.'' Where the alternative program, such as the 309 backstop trading program, has been designed to meet requirements other than BART, states may use simplifying assumptions in establishing a BART benchmark. These assumptions can provide the baseline to show that the alternative program achieves greater reasonable progress than BART (71 FR 60619). Under this approach, states should use the presumptive limits for EGUs in the BART Guidelines to establish the BART benchmark used in the comparison, unless the state determines that such presumptions are not appropriate for particular EGUs (70 FR 60619).

The SIP must provide an analysis of the projected emissions reductions achievable through the trading program or other alternative measure and a determination that the trading program or other alternative measure achieves greater reasonable progress than would be achieved through the installation and operation of BART pursuant to 40 CFR 51.308(e)(1). 40 CFR 308(e)(2)(i)(D)–(E). Under 40 CFR 51.308(e)(2)(iii)–(iv), all emission reductions for the alternative program must take place by 2018, and all the emission reductions resulting from the alternative program must be surplus to those reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP. Pursuant to 40 CFR 51.309(e)(2)(v), states have the option of including a provision that the emissions trading program or other alternative measure include a geographic enhancement to the program to address the requirement under 40 CFR 51.302(c) related to BART for reasonably attributable visibility impairment from the pollutants covered under the emissions trading program or other alternative measure.

States must also address the distribution of emissions under the BART alternative as part of the better-than-BART demonstration. 40 CFR 51.308(e)(3). If a state can show that with the alternative program the distribution of emissions is not substantially different from source-specific BART, and the alternative program results in greater emission reductions than source-specific BART, then the alternative measure may be deemed to achieve greater reasonable progress. If the distribution of emissions is significantly different, the state must conduct dispersion modeling to determine differences in visibility between source-specific BART and the alternative program for each impacted Class I area for the 20% worst and best days. The modeling must show that visibility does not decline at any Class I area and that visibility overall is greater than what would be achieved with source-specific BART.

B. Elements Required for All Alternative Programs That Have an Emissions Cap

Under 40 CFR 51.308(e)(2)(vi)(A)–(L), EPA established fundamental requirements for trading or alternative programs that have an emissions cap and require sources to hold allowances that they can sell, buy, or trade, as in the case for the 309 backstop trading program. These requirements are summarized below.

1. Applicability

The alternative program must have applicability provisions that define the sources subject to the program. In the case of a program covering sources in multiple states, the states must demonstrate that the applicability provisions in each state cover essentially the same size facilities and, if source categories are specified, cover the same source categories.

2. Allowances

Allowances are a key feature of a cap and trade program. An allowance is a limited authorization for a source to emit a specified amount of a pollutant,

as defined by the specific trading program, during a specified period. Allowances are fully marketable commodities. Once allocated, allowances may be bought, sold, traded, or banked for use in future years. EPA has not included in the rule detailed requirements on how states and tribes can allocate allowances. A state or tribe can determine how to allocate allowances as long as the allocation of the tonnage value of allowances does not exceed the total number of tons of emissions capped by the budget. The trading program must include allowance provisions ensuring that the total value of allowances issued each year under the program will not exceed the emissions cap on total annual emissions from the sources in the program.

3. Monitoring, Recordkeeping, and Reporting

MRR of a source's emissions are integral parts of any cap and trade program. Consistent and accurate measurement of emissions ensures that each allowance actually represents its specified tonnage value of emissions and that one ton of reported emissions from one source is equivalent to one ton of reported emissions at another source. The MRR provisions must require that boilers, combustion turbines, and cement kilns in the alternative program that are allowed to sell or transfer allowances comply with the requirements of 40 CFR part 75. The MRR provisions must require that other sources in the program allowed to sell or transfer allowances provide emissions information with the same precision, reliability, accessibility, and timeliness as information required by 40 CFR part 75.

4. Tracking System

An accurate and efficient tracking system is critical to the functioning of an emissions trading market. The tracking system must also be transparent, allowing all interested parties access to the information contained in the accounting system. Thus, alternative programs must have requirements for a tracking system that is publicly available in a secure, centralized database to track in a consistent manner all allowances and emissions in the program.

5. Account Representative

Each source owner or operator covered by the alternative program must designate an individual account representative who is authorized to represent the owner or operator in all matters pertaining to the trading program and who is responsible for the data reported for that source. The account representative will be responsible for, among other things, permitting, compliance, and allowance related actions.

6. Allowance Transfer

SIPs must contain provisions detailing a uniform process for transferring allowances among all sources covered by the program and other possible participants. The provisions must provide procedures for sources to request an allowance transfer, for the request and transfer to be recorded in the allowance tracking system, for notification to the source that the transfer has occurred, and for notification to the public of each transfer and request.

7. Compliance Provisions

Cap and trade programs must include compliance provisions that prohibit a source from emitting more emissions than the total tonnage value of allowances the source holds for that year. A cap and trade program must also contain the specific methods and procedures for determining compliance on an annual basis.

8. Penalty Provisions

In order to provide sources with a strong incentive to comply with the requirement to hold sufficient allowances for their emissions on an annual basis and to establish an immediate minimum economic consequence for non-compliance, the program must include a system for mandatory allowance deductions. SIPs must contain a provision that if a source has excess emissions in a given year, allowances allocated for the subsequent year will be deducted from the source's account in an amount at least equal to three times the excess emissions.

9. Banking of Allowances

The banking of allowances occurs when allowances that have not been used for compliance are set aside for use in a later compliance period. Alternative programs can include provisions for banked allowances, so long as the SIP clearly identifies how unused allowances may be used in future years and whether there are any restrictions on the use of any such banked allowances.

10. Program Assessment

The alternative program must include provisions for periodic assessment of the program. Such periodic assessments are a way to retrospectively assess the performance of the trading program in meeting the goals of the regional haze program and determining whether the trading program needs any adjustments or changes. At a minimum, the program evaluation must be conducted every five years to coincide with the periodic report describing progress towards the reasonable progress goals required under 40 CFR 51.308(g) and must be submitted to EPA.

V. Our Analysis of Wyoming's Submittal

The following summarizes how Wyoming's January 12, 2011 submittal meets the requirements of 40 CFR 51.309, with the exception of 40 CFR 51.309(d)(4)(iii), 40 CFR 51.309(d)(4)(vii), and 40 CFR 51.309(g), which as discussed above, EPA plans to propose action on in a future notice.

A. Projection of Visibility Improvement

Pursuant to 40 CFR 51.309(d)(2), Wyoming provided a comparison of the monitored 2000–2004 baseline visibility conditions in deciviews for the 20 percent best and 20 percent worst days to the projected visibility improvement for 2018 for the Class I areas on the Colorado Plateau (see section K.2 of the SIP). Table 1 shows the State's baseline monitoring data and projected visibility improvement for 2018 from the WRAP photochemical modeling (for details on the WRAP emission inventories and photochemical modeling refer to the WRAP Technical Support Document (TSD) [9] and our review of the technical products developed by the WRAP for the states in the western region, in support of their regional haze SIPs).[10] The projected visibility improvement for the 2018 Base Case (referred to as the Base18b emission inventory and modeled projections) reflects growth plus all controls ''on the books'' as of December 2004. The projected visibility improvement for the Preliminary Reasonable Progress Case (referred to as the PRP18b emission inventory and modeled projections) reflects refined growth estimates, all controls ''on the books'' as of 2007, and includes presumptive or known SO_2 BART controls. The modeling results show projected visibility improvement for the 20 percent worst days in 2018 and no degradation in visibility conditions on

[9] *WRAP Regional Technical Support Document for the Requirements of § 309 of the Regional Haze Rule (64 Federal Register 35714—July 1, 1999),* revised May 7, 2008, which can be found in the State's TSD included in the docket of this action.

[10] Our review of the technical products developed by the WRAP is available as *Technical Support Document for Technical Products Prepared by the Western Regional Air Partnership (WRAP) in Support of Western Regional Haze Plans,* February 28, 2011, which can be found in the Supporting and Related Materials section of the docket.

the 20 percent best days at all 16 Class I areas on the Colorado Plateau. We are proposing to determine the State's SIP satisfies the requirements of 40 CFR 51.309(d)(2).

TABLE 1—BASELINE AND 2018 VISIBILITY AT THE COLORADO PLATEAU CLASS I AREAS

Class I area	State	20 Percent worst visibility days			20 Percent best visibility days		
		2000–2004 Baseline monitoring data (deciview)	2018 Base case (deciview)	2018 Preliminary reasonable progress case (deciview)	2000–2004 Baseline monitoring data (deciview)	2018 Base case (deciview)	2018 Preliminary reasonable progress case (deciview)
Grand Canyon National Park	AZ	11.7	11.4	11.3	2.2	2.2	2.1
Mount Baldy Wilderness	AZ	11.9	11.5	11.4	3.0	2.9	2.8
Petrified Forest National Park	AZ	13.2	12.9	12.9	5.0	4.9	4.8
Sycamore Canyon Wilderness	AZ	15.3	15.1	15.1	5.6	5.6	5.6
Black Canyon of the Gunnison National Park Wilderness.	CO	10.3	10.1	9.9	3.1	2.9	2.9
Flat Tops Wilderness	CO	9.6	9.2	9.0	0.7	0.6	0.5
Maroon Bells Wilderness	CO	9.6	9.2	9.0	0.7	0.6	0.5
Mesa Verde National Park	CO	13.0	12.8	12.6	4.3	4.1	4.0
Weminuche Wilderness	CO	10.3	10.1	9.9	3.1	2.9	2.9
West Elk Wilderness	CO	9.6	9.2	9.0	0.7	0.6	0.5
San Pedro Parks Wilderness	NM	10.2	10.0	9.8	1.5	1.3	1.2
Arches National Park	UT	11.2	11.0	10.9	3.8	3.6	3.5
Bryce Canyon National Park	UT	11.6	11.3	11.2	2.8	2.7	2.6
Canyonlands National Park	UT	11.2	11.0	10.9	3.8	3.6	3.5
Capitol Reef National Park	UT	10.9	10.6	10.5	4.1	4.0	3.9
Zion National Park	UT	13.2	13.0	13.0	5.0	4.7	4.7

B. Clean Air Corridors

1. Comprehensive Emissions Tracking Program

Pursuant to 40 CFR 51.309(d)(3), Wyoming is using a comprehensive emissions tracking system established by WRAP to track emissions within portions of Oregon, Idaho, Nevada and Utah that have been identified as part of the CAC (see section B.1(a) of the SIP). The emission tracking is to ensure that visibility does not degrade on the least-impaired days in any of the 16 Class I areas of the Colorado Plateau. For a complete description of the emission tracking system and the process by which the annual emission trends will be summarized in order to identify any significant emissions growth that could lead to visibility degradation in the 16 Class I areas, see *Description of Comprehensive Emissions Tracking System* in the Wyoming Technical Support Document (TSD). The TSD can be found in the docket for this notice.

2. Identification of Clean Air Corridors

Pursuant to 40 CFR 51.309(d)(3)(i), the State has provided the geographic boundaries of the CAC (a map of the CAC can be found in Section B of the SIP). The WRAP identified the CAC using studies conducted by the Meteorological Subcommittee of the GCVTC and then updated the CAC based on an assessment described in the *WRAP Policy on Clean Air Corridors* located in the Wyoming TSD. The technical studies and findings supporting the *WRAP Policy on Clean Air Corridors* are located in Chapter 3 of the WRAP TSD.

3. Patterns of Growth Within and Outside of the Clean Air Corridor

Pursuant to 40 CFR 51.309(d)(3)(ii)–(iii), the State has determined, based on the *WRAP Policy on Clean Air Corridors* and technical analysis conducted by the WRAP, that inside and outside the CAC there is no significant emissions growth occurring at this time that is causing visibility impairment in the 16 Class I areas of the Colorado Plateau. The WRAP will summarize annual emission trends within and outside of the CAC and will assess whether any significant emissions growth is occurring that could result in visibility impairment in any of the 16 Class I areas (see section B.1(c) of the SIP).

4. Actions if Impairment Inside or Outside the Clean Air Corridor Occurs

The State, in coordination with other transport region states and tribes, will review the annual summary of emission trends within the CAC and determine whether any significant emissions growth has occurred. If the State identifies significant emissions growth, the State, in coordination with other transport region states and tribes, will conduct an analysis of the effects of this emissions growth. Pursuant to 40 CFR 51.309(d)(3)(iv), if this analysis finds that the emissions growth is causing visibility impairment in the 16 Class I areas, the State will evaluate the need for additional emission reduction measures and identify an implementation schedule for such measures. The State will report on the need for additional reduction measures to EPA in accordance with the periodic progress reports required under 40 CFR 51.309(d)(10)(i) (see section B.1(d) and (e) of the SIP).

5. Other Clean Air Corridors

Pursuant to 40 CFR 51.309(d)(3)(v), the State has concluded that no other CACs can be identified at this time. The State's conclusion is based on the *WRAP Policy on Clean Air Corridors,* which determined that no other CACs could be identified (see section B.1(f) of the SIP).

We are proposing to determine that the State's SIP meets the requirements of 40 CFR 51.309(d)(3).

C. Stationary Source Reductions

1. Provisions for Stationary Source Emissions of Sulfur Dioxide

As required by 40 CFR 51.309(d)(4)(i), the State has adopted SO_2 milestone numbers for each year of the program until 2018 (see section C.A1.1of the SIP).[11] Table 2 shows the milestone

[11] The milestone numbers reflect the participation of Wyoming, Utah, and New Mexico, including

numbers and how compliance with the annual milestones will be determined.

TABLE 2—SO_2 EMISSIONS MILESTONES

Year	Regional sulfur dioxide milestone (tons per year (tpy))	Annual SO_2 emissions used to determine compliance with the annual milestones
2008	269,083 tons SO_2	Average of 2006, 2007 and 2008.
2009	234,903 tons SO_2	Average of 2007, 2008 and 2009.
2010	200,722 tons SO_2	Average of 2008, 2009 and 2010.
2011	200,722 tons SO_2	Average of 2009, 2010 and 2011.
2012	200,722 tons SO_2	Average of 2010, 2011 and 2012.
2013	185,795 tons SO_2	Average of 2011, 2012 and 2013.
2014	170,868 tons SO_2	Average of 2012, 2013 and 2014.
2015	155,940 tons SO_2	Average of 2013, 2014 and 2015.
2016	155,940 tons SO_2	Average of 2014, 2015 and 2016.
2017	155,940 tons SO_2	Average of 2015, 2016 and 2017.
2018	141,849 tons SO_2	Year 2018 only.
2019 forward, until replaced by an approved SIP	141,849 tons SO_2	Annual; no multiyear averaging.

SO_2 emissions from sources in 1990 totaled 358,364 tpy and the 2018 milestone is 141,849 tpy.[12] The difference is a 60 percent reduction in SO_2 emissions from 1990 to 2018. Pursuant to 40 CFR 51.309(d)(4)(i), the State has concluded that the emission reductions are on target to achieve the GCVTC goal of a 50 to 70 percent reduction of SO_2 emissions by 2040.

We are proposing to determine the State's SIP meets the requirements of 40 CFR 51.309(d)4)(i).

2. Documentation of Emissions Calculation Methods for Sulfur Dioxide

Pursuant to 40 CFR 51.309(d)(4)(ii), the SIP includes documentation of the specific methodology used to calculate SO_2 emissions during the 2006 base year for each emitting unit included in the program (see Appendix E of the SIP). A detailed spreadsheet report that provides the baseline numbers and methodology used to calculate emissions for sources covered by the program is included in this docket.[13]

Pursuant to 40 CFR 51.309(d)(4)(ii), the SIP requires the State to document any change to the specific methodology used to calculate emissions at any emitting unit for any year after the base year. Until the program has been triggered and source compliance is required, the State will submit an annual emissions report to EPA that documents prior year emissions for Wyoming sources covered by the 309 program to all participating states by September 30 of each year. The State will adjust actual emission inventories for sources that change the method of monitoring or calculating their emissions to be comparable to the emission monitoring or calculation method used to calculate the 2006 base year inventory (see section C.A3 of the SIP).

We are proposing to determine the State's SIP meets the requirements of 40 CFR 51.309(d)(4)(ii).

3. Monitoring, Recordkeeping, and Reporting of Sulfur Dioxide Emissions

In order to meet the emission reporting requirements of 40 CFR 51.309(d)(4)(iii), the SIP includes provisions requiring the monitoring, recordkeeping, and reporting of actual stationary source SO_2 emissions within the State to determine if the milestone has been exceeded. The pre-trigger emission inventory requirements are covered by WAQSR Chapter 14, Section 3, which was included in Wyoming's April 19, 2012 submittal.

We are proposing to determine the State's SIP meets the requirements of 40 CFR 51.309(d)(4)(iii), and we are proposing to approve WAQSR Chapter 14, Section 3.

4. Criteria and Procedures for a Market Trading Program

Until the backstop trading program has been triggered and source compliance is required, the State shall submit an annual emissions report for Wyoming sources to all participating states by September 30th of each year. The report shall document actual SO_2 emissions during the previous calendar year for all sources subject to the section 309 program. The WRAP will compile reports from all participating states into a draft regional emission report for SO_2 by December 31st of each year. This report will include actual regional SO_2 emissions, adjustments to account for changes in monitoring/calculation methods or enforcement/settlement agreements, and adjusted average emissions for the last three years for comparison to the regional milestone. As required by 40 CFR 51.309(d)(4)(iv), based on this compilation of reports from all states participating in the 309 program, states will determine if the milestone has been exceeded and will include a determination in a final regional emissions report that is submitted to EPA. This final report and determination will be submitted to EPA by the end of March, 15 months following the milestone year (see section C.A.3 of the SIP).

We are proposing to determine the State's SIP meets the requirements of 40 CFR 51.309(d)(4)(iv).

5. Market Trading Program

Per 40 CFR 51.309(d)(4)(v), the SIP provides that if the 309 backstop trading program is triggered, the regional emissions report will contain a common trigger date. In the absence of a common trigger date, the default date will be March 31st of the applicable year, but no later than 15 months after the end of the milestone year where the milestone was exceeded (see section C.3.10 of the SIP). The State's SIP requires that sources comply, as soon as practicable, with the requirement to hold allowances covering their emissions. Because the backstop trading program does not allow allocations to exceed the milestone, the program is sufficient to achieve the milestones adopted pursuant to 40 CFR 51.309(d)(4)(i) as discussed above. The backstop trading program is also consistent with the

Albuquerque-Bernalillo County in the 309 backstop trading program.

[12] See Demonstration that the SO_2 Milestones Provide Greater Reasonable Progress than BART in section D of the State's TSD.

[13] See 2006 Inventory Documentation in the Supporting and Related materials section of the docket.

elements for such programs outlined in 40 CFR 51.308(e)(2)(vi). The analysis found in Section V.E. of this notice shows that the backstop trading program is consistent with the elements for trading programs outlined in 40 CFR 51.308(e)(2)(vi).

We are proposing to determine the State's SIP meets the requirements of 40 CFR 309(d)(4)(v).

6. Provisions for the 2018 Milestone

Pursuant to 40 CFR 51.309(d)(vi)(A), the SIP has provisions to ensure that, until a revised implementation plan is submitted in accordance with 40 CFR 51.308(f) and approved by EPA, emissions from covered stationary sources in any year beginning in 2018 do not exceed the 2018 milestone. In order to meet this requirement, the State has included special provisions for what will be required as part of their 2013 SIP revision required under 40 CFR 51.309(d)(10). The State's SIP provides that the 2013 SIP revision required by 40 CFR 51.309(d)(10) will contain either the provisions of a program designed to achieve reasonable progress for stationary sources of SO_2 beyond 2018 or a commitment to submit a SIP revision containing the provisions of such a program no later than December 31, 2016 (see section D.2 of the SIP).

We are proposing to determine the State's SIP meets the requirements of 40 CFR 51.309(d)(4)(vi)(A).

7. Special Penalty Provision for 2018

Pursuant to 40 CFR 51.309(d)(vi)(B), the SIP includes special penalty provisions to ensure that the 2018 milestone is met. If the backstop trading program is triggered and it will not start until after the year 2018, a special penalty shall be assessed to sources that exceed the 2018 milestone. Wyoming shall seek at least the minimum financial penalty of $5,000 per ton of SO_2 emissions in excess of a source's allowance limitation. Any source may resolve its excess emissions violation by agreeing to a streamlined settlement approach where the source pays a penalty of $5,000 per ton or partial ton of excess emissions and the source makes the payment within 90 calendar days after the issuance of a notice of violation.

Any source that does not resolve its excess emissions violation in accordance with the streamlined settlement approach will be subject to civil enforcement action, in which the State shall seek a financial penalty for the excess emissions based on the State's statutory maximum civil penalties. The special penalty provisions for 2018 will apply for each year after 2018 until the State determines that the 2018 milestone has been met. The State will evaluate the amount of the minimum monetary penalty during each five-year SIP review and the penalty will be adjusted to ensure that penalties per ton substantially exceed the expected cost of allowances, and are thus stringent penalties (see Chapter 14, Section 2(l) and section A.5 of the SIP).

We are proposing to determine the State's SIP meets the requirements of 40 CFR 51.309(d)(4)(vi)(B).

D. ''Better-Than-BART'' Demonstration

As discussed in Section IV.A of this preamble, if a state adopts an alternative program designed to replace source-specific BART controls, the state must be able to demonstrate that the alternative program achieves greater reasonable progress than would be achieved by BART. Wyoming has included a demonstration of how the 309 program achieves greater reasonable progress than BART as discussed in the document titled Demonstration that the SO_2 Milestones Provide for Greater Reasonable Progress than BART (''better-than-BART'' demonstration). Section V.D.5 below contains a discussion on how the 309 backstop trading program achieves greater reasonable progress than BART. New Mexico and Utah have also submitted SIPs with the same better-than-BART demonstration as Wyoming, and thus, are relying on a consistent demonstration across the states.

1. List of BART-Eligible Sources

Pursuant to 40 CFR 51.308(e)(2)(i)(A), the State's better-than-BART demonstration lists the BART-eligible sources covered by the program (see Table 3 below). BART eligible sources are identified as those sources that fall within one of the 26 specific source categories, were built between 1962 and 1977 and have potential emissions of 250 tons per year of any visibility impairing air pollutant.

We are proposing that this satisfies the requirements of 40 CFR 51.308(e)(2)(i)(A).

2. Subject-to-BART Determination

Pursuant to 40 CFR 51.308(e)(2)(i)(B), the State has determined which sources are subject-to-BART. Each of the section 309 states provided source modeling that determined which of the BART-eligible sources within their states to determine which sources cause or contribute to visibility impairment and are thus subject-to-BART. The State of New Mexico and Utah relied on modeling by the WRAP to identify sources subject to BART. Based on the list of identified sources, the WRAP performed the initial BART modeling for the State of New Mexico and Utah. The procedures used are outlined in the WRAP Regional Modeling Center (RMC) BART Modeling Protocol.[14] The State of Wyoming performed separate modeling to identify sources subject-to-BART.[15]

The states established a contribution threshold of 0.5 deciviews for determining if a single source causes or contributes to visibility impairment. If the modeling shows that a source has a 0.5 deciview impact at any Class I area, that source causes or contributes to visibility impairment and is subject-to-BART. Table 3 shows the BART-eligible sources covered by the 309 backstop program and whether they are subject-to-BART.

We are proposing to determine that the State's SIP meets the requirements of 40 CFR 51.308(e)(2)(i)(B).

TABLE 3—SUBJECT-TO-BART STATUS FOR SECTION 309 BART-ELIGIBLE SOURCES

State	Company	Facility	Subject-to-BART?
New Mexico	Frontier	Empire Abo	No.
New Mexico	Xcel Energy	SWPS Cunningham Station	No.
New Mexico	Duke Energy	Artesia Gas Plant	No.
New Mexico	Duke Energy	Linam Ranch Gas Plant	No.

[14] *CALMET/CALPUFF Protocol for BART Exemption Screening Analysis for Class I Areas in the Western United States,* Western Regional Air Partnership (WRAP); Gail Tonnesen, Zion Wang; Ralph Morris, Abby Hoats and Yiqin Jia, August 15, 2006. Available at: *http://pah.cert.ucr.edu/aqm/308/bart/WRAP_RMC_BART_Protocol_Aug15_2006.pdf.*

[15] *BART Air Modeling Protocol, Individual Source Visibility Assessments for BART Control Analyses,* State of Wyoming, Department of Environmental Quality, Air Quality Division, Cheyenne, WY September 2006.

TABLE 3—SUBJECT-TO-BART STATUS FOR SECTION 309 BART-ELIGIBLE SOURCES—Continued

State	Company	Facility	Subject-to-BART?
New Mexico	Dynegy	Saunders	No.
New Mexico	Giant Refining	San Juan Refinery	No.
New Mexico	Giant Refining	Ciniza Refinery	No.
New Mexico	Xcel Energy	SWPS Maddox Station	No.
New Mexico	Marathon	Indian Basin Gas Plant	No.
New Mexico	Public Service of New Mexico	San Juan Generating Station	Yes.
New Mexico		Rio Grande Station	No.
New Mexico	Western Gas Resources	San Juan River Gas Plant	No.
Utah	Pacificorp	Hunter	Yes.
Utah	Pacificorp	Huntington	Yes.
Wyoming	Basin Electric	Laramie River	Yes.
Wyoming	Black Hills Power & Light	Neil Simpson I	No.
Wyoming	Dyno Nobel	Dyno Nobel	No.
Wyoming	FMC Corp.	Green River Soda Ash Plant	Yes.
Wyoming	FMC Corp.	Granger River Soda Ash Plant	No.
Wyoming	General Chemical	Green River Soda Ash Plant	Yes.
Wyoming	P4 Production	Rock Springs Coking Plant	No.
Wyoming	Pacificorp	Dave Johnston	Yes.
Wyoming	Pacificorp	Jim Bridger	Yes.
Wyoming	Pacificorp	Naughton	Yes.
Wyoming	Pacificorp	Wyodak	Yes.
Wyoming	Sinclair Oil Corp	Sinclair Refinery	No.
Wyoming	Sinclair Refinery	Casper	No.

3. Best System of Continuous Emission Control Technology

As required by 40 CFR 51.308(e)(2)(i)(C), the State determined what BART would be for each subject-to-BART source covered by the 309 backstop trading program. In the State's better-than-BART demonstration, all subject-to-BART EGUs were assumed to be operating at the presumptive SO_2 emission rate of 0.15 lb/MMBtu established in the BART Guidelines (70 FR 39171). The 309 program also includes non-EGU subject-to-BART units. As explained in the better-than-BART demonstration, the non-EGU subject-to-BART units are four boilers located at two trona plants in Wyoming: FMC Westvaco and General Chemical Green River. Wyoming made a determination of what BART would be for these non-EGU units. FMC Westvaco recently installed pollution control projects achieving a 63% reduction in SO_2 from its two boilers. Wyoming determined this control level would serve as a BART benchmark for all trona boilers. Thus, a 63% reduction in emissions from these sources was included in the BART benchmark in calculating emission reductions assuming the application of BART at these sources. Emission reductions or the BART benchmark for all subject-to-BART sources covered by the 309 program was calculated to be 48,807 tons of SO_2 (all supporting calculations for the ''better-than-BART'' demonstration are located in the State's TSD under the title *10-6-10_milestone.xls*).

We are proposing to determine the State's SIP meets the requirements of 40 CFR 51.308(e)(2)(i)(C).

4. Projected Emissions Reductions

As required by 40 CFR 51.308(e)(2)(i)(D), the State has provided the expected emission reductions that would result from the 309 backstop trading program. The better-than-BART demonstration projects that 2018 baseline emissions would be 190,656 tpy of SO_2 for the sources covered by the 309 program in the participating states. The reductions achieved by the program are 48,807 tpy of SO_2, resulting in remaining emissions of 141,849 tpy of SO_2 in 2018.

We are proposing to determine the State's SIP meets the requirements of 40 CFR 51.308(e)(2)(i)(D).

5. Evidence That the Trading Program Achieves Greater Reasonable Progress Than BART

The State's better-than-BART demonstration provides numerous reasons why the SO_2 backstop trading program is better than BART. First, additional sources beyond BART sources are included. The backstop trading program includes all stationary sources with emissions greater than 100 tpy of SO_2, and thus, encompasses 63 non-subject-to-BART sources, which are identified in the better-than-BART demonstration. BART applied on a source-specific basis would not affect these sources, and there would be no limitation on their future operations under their existing permit conditions, or allowable emissions. The milestones will cap these sources at 2002 actual emissions, which are less than current allowable emissions.

The program also provides for a cap on new source growth. Future impairment is prevented by capping emissions growth from sources covered by the program and also by including entirely new sources in the region under the cap. BART applied on a source-specific basis would have no impact on future growth. The backstop trading program also provides a mass-based cap that has inherent advantages over applying BART to each individual source. The baseline emission projections and assumed reductions due to the assumption of BART-level emission rates on all sources subject-to-BART are all based on actual emissions, using 2006 as the baseline. If the BART process were applied on a source-specific basis to individual sources, emission limitations would typically be established as an emission rate (lbs/hr or lbs/MMBtu) that would account for variations in the sulfur content of fuel and alternative operating scenarios, or allowable emissions. A mass-based cap that is based on actual emissions is more stringent because it does not allow a source to consistently use this difference between current actual and allowable emissions.

We are proposing to determine the State's 309 backstop trading program achieves greater reasonable progress than would be achieved through the

installation and operation of BART, and thus, meets the requirements of 40 CFR 51.308(e)(2)(i)(E).

6. All Emission Reductions Must Take Place During the First Planning Period

The first planning period ends in 2018. As discussed above, the reductions from the 309 program will occur by 2018. We are therefore proposing to determine the State's SIP meets the requirements of 40 CFR 51.308(e)(2)(iii).

7. Detailed Description of the Alternative Program

The detailed description of the backstop trading program are provided in Section C—Stationary Sources of the State's SIP and WAQSR Chapter 14 Section 2. The details of the backstop trading program are discussed in section V.E of this notice. We are proposing to determine that the State's SIP meets the detailed description requirement in 40 CFR 51.308(e)(2)(iii).

8. Surplus Reductions

We propose to approve the determination in the State's 309 SIP submittal that all emission reductions resulting from the emissions trading program are surplus as of the baseline date of the SIP, as required by 40 CFR 51.308(e)(2)(iv).

9. Geographic Distribution of Emissions

Pursuant to 40 CFR 51.308(e)(3), the State used modeling conducted by the WRAP to compare the visibility improvement expected from source-by-source BART to the backstop trading program for the Class I areas on the Colorado Plateau. A summary of the modeling results can be found in Section K of the State's SIP, which refers to data from modeling included in Tables 2 and 3 of Attachment C to the Annex.[16] [17] This modeling was conducted during the development of the Annex to examine if the geographic distribution of emissions under the trading program would be substantially different and disproportionately impact any Class I area due to a geographic concentration of emissions. The modeled visibility improvement for the best and worst days at the Class I areas for the 309 program is similar to improvement anticipated from the BART scenario (within 0.1 deciview) on the worst and best visibility days. Thus, if we assume participation and milestones consistent with the model, the model demonstrates that the distribution of emissions between the BART scenario and the 309 trading program are not substantially different. We note this modeling demonstration included nine states, many of which are not participating in the backstop trading program. This modeling demonstration adds support to our proposed determination, discussed above in this section, that the regional haze 309 SIP submittal appropriately shows the trading program will achieve greater reasonable progress than would be achieved through the installation and operation of BART, as required by 40 CFR 51.308(e)(2)(i)(E).

E. Requirements for Alternative Programs With an Emissions Cap

The following analysis shows that the State's SIP is consistent with the elements for trading programs required by 40 CFR 51.308(e)(2)(vi). The backstop trading program contains milestones, which are in effect a cap. Under a backstop trading program, the provisions of a trading program are enacted only if the milestone has been exceeded. Since the 309 trading program is a backstop trading program, the provisions outlined below will only apply if the milestone is exceeded and the program is triggered.

1. Applicability Provisions

Pursuant to 40 CFR 51.308(e)(2)(vi)(A), the backstop trading program has the same applicability requirements in all states opting to participate in the program. WAQSR Chapter 14, Section 2(c) contains the applicability provisions and provides that the backstop trading program applies to all stationary sources that emit 100 tons per year or more of SO_2 in the program trigger year.

We are proposing to approve that the State's SIP meets the requirements of 40 CFR 51.308(e)(2)(vi)(A).

2. Allowance Provisions

Section C.1.C1 of the SIP and WAQSR Chapter 14, Section 2(g) contain the allowance allocation provisions as required by 40 CFR 51.308(e)(2)(vi)(B). The rule requires sources to open a compliance account in order to track allowances and contains other requirements associated with those accounts. The SIP contains the provisions on how the State will allocate allowances and requires that the total number of allowances distributed cannot exceed the milestone for any given year.

We are proposing to determine the State's SIP meets the requirements of 40 CFR 51.308(e)(2)(vi)(B).

3. Monitoring, Recordkeeping and Reporting Provisions

Pursuant to 40 CFR 51.308(e)(2)(vi)(C)–(E), WAQSR Chapter 14, Section 2(h)(i)(A) provides that sources subject to 40 CFR part 75 under a separate requirement from the backstop trading program shall meet the requirements contained in 40 CFR part 75 with respect to MRR of SO_2 emissions. If a unit is not subject to 40 CFR part 75 under a requirement separate from the trading program, the State requires that a source use one of the following monitoring methods: (1) Continuous emission monitoring system for SO_2 and flow that complies with all applicable monitoring provisions in 40 CFR part 75; (2) if the unit is a gas- or oil-fired combustion device, the monitoring methodology in Appendix D to 40 CFR part 75, or, if applicable, the low mass emissions provisions (with respect to SO_2 mass emissions only) of section 75.19(c) of 40 CFR part 75; (3) one of the optional protocols, if applicable, in Appendix A to WAQSR Chapter 14;[18] or (4) a petition for site-specific monitoring that the source submits for approval by the State and EPA. All the above sources are required to comply with the reporting and recordkeeping requirements in 40 CFR part 75.

Although most sources covered by the backstop trading program will be able to meet the monitoring requirements stated above, there are some emission units that are either not physically able to install the needed equipment or do not emit enough SO_2 to justify the expense of installing these systems. As discussed in section C5.3 of the SIP, the trading program allows these emission units to continue to use their pre-trigger monitoring methodology, but does not allow the source to transfer any allocation to that unit to another source. The program requires that the allowances associated with emission units that continue to use their pre-trigger monitoring methodology be

[16] *Voluntary Emissions Reduction Program for Major Industrial Sources of Sulfur Dioxide in Nine Western States and A Backstop Market Trading Program,* an Annex to the Report of the Grand Canyon Visibility Transport Commission (September 2000) at C–15 and 16.

[17] WRAP conducted modeling of the degree of visibility improvement that would occur on average and for the 20% best and worst visibility days. The WRAP used the transfer coefficients developed as part of the Integrated Assessment System and used by the GCVTC. As noted in the Annex, this modeling has limitations which must be considered when interpreting the results.

[18] Appendix A of Chapter 14 contains monitoring requirements for fuel gas combustion devices at petroleum refineries and kilns with positive pressure fabric filters. Appendix A specifies the installation of a continuous fuel gas monitoring system and predictive flow monitoring system, respectively. Appendix A also specifies requirements under 40 CFR part 75 sources must follow in regards to this equipment.

placed in a special reserve compliance account, while allowances for other emission units are placed in a regular compliance account. Sources may not trade allowances out of a special reserve compliance account, even for use by emission units at the same source, but can use the allowances to show compliance for that particular unit.

WAQSR Chapter 14, Section 2(h)(i)(B) allows sources with any of the following emission units to apply to establish a special reserve compliance account: (1) Any smelting operation where all of the emissions from the operation are not ducted to a stack; (2) any flare, except to the extent such flares are used as a fuel gas combustion device at a petroleum refinery; or (3) any other type of unit without add-on SO_2 control equipment, if the unit belongs to one of the following source categories: cement kilns, pulp and paper recovery furnaces, lime kilns, or glass manufacturing. Pursuant to 40 CFR 51.308(e)(2)(vi)(E), sources with a special reserve compliance account are required to submit to the State an annual emissions statement and sources are required to maintain operating records sufficient to estimate annual emissions consistent with the baseline emission inventory submitted in 1998.

We are proposing to determine the State's SIP meets the requirements of 40 CFR 51.308(e)(2)(vi)(C)–(E).

4. Tracking System

As required by 40 CFR 51.308(e)(2)(vi)(F), section C2 of the SIP provides the overarching specifications for an Emissions and Allowance Tracking System (EATS). According to the SIP, the EATS must provide that all necessary information regarding emissions, allowances, and transactions is publicly available in a secure, centralized database. The EATS must ensure that each allowance is uniquely identified, allow for frequent updates, and include enforceable procedures for recording data. If the program is triggered, the State will work with other states and tribes participating in the trading program to implement this system. More detailed specifications for the EATS are provided in the *WEB Emission and Allowance Tracking System (EATS) Analysis* in the State's TSD. The State assumes responsibility for ensuring that all the EATS provisions are completed as described in its SIP and TSD.

In addition, the State will work with the other participating states to designate one tracking system administrator (TSA). The SIP provides that the TSA shall be designated as expeditiously as possible, but no later than six months after the program trigger date. The State will enter into a binding contract with the TSA that shall require the TSA to perform all TSA functions described in the SIP, such as transferring and recording allowances (see section A2.2 of the SIP).

We are proposing to determine that the State's SIP meets the requirements of 40 CFR 51.308(e)(2)(iv)(F).

5. Account Representative

Pursuant to 40 CFR 51.308(e)(2)(vi)(G), WAQSR Chapter 14, Section 2(d) contains provisions for the establishment of an account representative. The rule requires each source to identify one account representative. The account representative shall submit to the State and the TSA a signed and dated certificate that contains a certification statement verifying that the account representative has all the necessary authority to carry out the account representative responsibilities under the trading program on behalf of the owners and operators of the sources. The certification statement also needs to indicate that each such owner and operator shall be fully bound by the account representatives representations, actions, inactions, or submissions and by any decision or order issued to the account representative by the State regarding the trading program.

We are proposing to determine the State's SIP meets the requirements of 40 CFR 51.308(e)(2)(vi)(G).

6. Allowance Transfers

The State has established procedures pertaining to allowance transfers to meet the requirements of 40 CFR 51.308(e)(2)(vi)(H). WAQSR Chapter 14, Section 2(i) contains requirements sources must follow for allowance transfers. To transfer or retire allowances, the account representative shall submit the transfer account number(s) identifying the transferor account, the serial number of each allowance to be transferred, the transferor's account representative's name and signature, and date of submission. The allowance transfer deadline is midnight Pacific Standard Time on March 1 of each year following the end of the control period. Sources must correctly submit transfers by this time in order for a source to be able to use the allowance to demonstrate compliance.

Section C3 of the SIP provides the procedures the TSA must follow to transfer allowances. The TSA will record an allowance transfer by moving each allowance from the transferor account to the transferee account as specified by the request from the source, if the transfer is correctly submitted, and the transferor account includes each allowance identified in the transfer. Within five business days of the recording of an allowance transfer, the TSA shall notify the account representatives of both the transferor and transferee accounts, and make the transfer information publicly available on the Internet. Within five business days of receipt of an allowance transfer that fails to meet the requirements for transfer, the TSA will notify the account representatives of both accounts of the decision not to record the transfer, and the reasons for not recording the transfer.

We are proposing to determine that the State's SIP meets the requirements of 40 CFR 51.308(e)(2)(vi)(H).

7. Compliance Provisions

Pursuant to 40 CFR 51.308(e)(2)(vi)(I), the State has provided the procedures for determining compliance in WAQSR Chapter 14, Section 2(k). Per this section, the source must hold allowances as of the allowance transfer deadline in the source's compliance account (together with any current control year allowances held in the source's special reserve compliance account) in an amount not less than the total SO_2 emissions for the control period from the source. The State determines compliance by comparing allowances held by the source in their compliance account(s) with the total annual SO_2 emissions reported by the source. If the comparison of the allowances to emissions results in emissions exceeding allowances, the source's excess emissions are subject to the allowance deduction penalty discussed in further detail below.

We are proposing to determine that the State's SIP meets the requirements of 40 CFR 51.308(e)(2)(vi)(I).

8. Penalty Provisions

WAQSR Chapter 14, Section 2(k)(iii) provides the penalty provisions required by 40 CFR 51.308(e)(2)(vi)(J). Per this section, a source's allowances will be reduced by an amount equal to three times the source's tons of excess emissions if they are unable to show compliance. Allowances allocated for the following control period will be the original allowance minus the allowance penalty. If the compliance account does not have sufficient allowances allocated for that control period, the required number of allowances will be deducted from the source's compliance account regardless of the control period for which they were allocated.

We are proposing to determine that the State's SIP meets the requirements of 40 CFR 51.308(e)(2)(vi)(J).

9. Banking of Allowances

As allowed by 40 CFR 51.308(e)(2)(vi)(K), WAQSR Chapter 14, Section 2(j) allows sources to use allowances from current and prior years to demonstrate compliance, with some restrictions. Sources can only use 2018 allowances to show compliance with the 2018 milestone and may not use allowances from prior years. In order to ensure that the use of banked allowances does not interfere with the attainment or maintenance of reasonable progress goals, the backstop trading program includes flow-control provisions. The flow-control provisions are triggered if the TSA determines that the banked allowances exceed ten percent of the milestone for the next control year, and thereby ensure that too many banked emissions are not used in any one year (see section C4 of the SIP).

We are proposing to determine the State's SIP meets the requirements of 40 CFR 51.309(e)(2)(vi)(J).

10. Program Assessment

Pursuant to 40 CFR 51.308(e)(2)(vi)(L), the SIP contains provisions for a 2013 assessment and SIP revision. For the 2013 assessment, the State will work with other participating states to develop a projected emission inventory for SO_2 through the year 2018. The State will then evaluate the projected inventory and assess the likelihood of meeting the regional milestone for the year 2018. The State shall include this assessment as part of the 2013 progress report that must be submitted under 40 CFR 51.309(d)(10) (see section D1 of the SIP).

We are proposing to determine the State's SIP meets the requirements of 40 CFR 308(e)(2)(vi)(L).

F. Provisions for Stationary Source Emissions of Nitrogen Oxides and Particulate Matter

Pursuant to 40 CFR 51.309(d)(4)(vii), the State submitted another SIP dated January 12, 2011 that contains the requirements for PM and NO_X BART. EPA plans to act on this submittal in a separate notice.

G. Mobile Sources

Pursuant to 40 CFR 51.309(d)(5)(i), the State, in collaboration with the WRAP, assembled a comprehensive statewide inventory of mobile source emissions. The inventory included on-road and non-road mobile source emissions inventories for western states for the 2003 base year and emission projections for the year 2018.[19] The inventory shows a continuous decline in emissions from mobile sources from VOC, NO_X, $PM_{2.5}$, EC, and OC emissions over the period of 2003–2018. Between 2003 and 2018, the inventory shows that there will be a 54 percent decrease in NO_X emissions, a 39 percent decrease in OC, a 24 percent decrease in EC, a 38 percent decrease of $PM_{2.5}$, and a 56 percent decrease of VOC. Per 40 CFR 51.309(d)(5)(i)(A), the inventory shows a decline in the required mobile source emissions categories and therefore no further action is required by the State to address mobile source emissions (see section D.1 of the SIP).

Pursuant to 40 CFR 51.309(d)(5)(i)(B), the State reviewed SO_2 emissions from non-road mobile sources. The emission inventory projections show that there will be a 99 percent decrease in SO_2 emissions from non-road mobile sources for 2003–2018. The reduction will result from the implementation of EPA's rule titled *Control of Emissions of Air Pollution from Non-road Diesel Engines and Fuel* (see 69 FR 38958). The State determined that a 99 percent reduction in SO_2 from non-road mobile sources is consistent with the goal of reasonable progress and that no other long-term strategies are necessary to address SO_2 emissions from non-road mobile sources (see section D.1.c of the SIP).

We are proposing to determine the State's SIP meets the requirements of 40 CFR 51.309(d)(5).

H. Programs Related to Fire

1. Evaluation of Current Fire Programs

Pursuant to 40 CFR 51.309(d)(6)(i), the State has evaluated its existing open burning regulations and all existing federal and private prescribed fire smoke management programs in the State. The State evaluated the potential for fire to contribute to visibility impairment in the 16 Class I areas of the Colorado Plateau, and how visibility protection is addressed by different entities in planning and operation. The state of Wyoming relied upon the WRAP report *Assessing Status of Incorporating Smoke Effects into Fire Planning and Operation,* as well as EPA's *Interim Air Quality Policy on Wildland and Prescribed Fire* as guides for making this evaluation. (A full copy of these documents can be found in the Wyoming TSD and the Supporting and Related materials section of the docket, respectively).

The State determined that a new smoke management regulation, incorporated as WAQSR Chapter 10, Section 4 and submitted as part of the regional haze SIP, would be required to meet the requirements of 40 CFR 51.309(d)(6)(i). WAQSR Chapter 10, Section 4 establishes requirements for vegetative burners pertaining to the management of emissions and air quality impacts from smoke on public health and visibility. WAQSR Chapter 10, Section 4 applies to burns that will emit more than 0.25 tons of $PM_{2.5}$ per day. There are two types of burns specified by the rule. SMP–I burns are those burn projects expected to generate less than two tons per day of PM_{10} and SMP–II burns are those burn projects expected to generate two tons per day or more of PM_{10}. The following discusses how the requirements of WAQSR Chapter 10, Section 4 meet the requirements of 40 CFR 51.309(d)(6)(i). The four required program elements are discussed below and are contained in WAQSR Chapter 10, Section 4.

a. Actions To Minimize Emissions

In order to minimize emissions, the State's SIP relies on the use of emission reduction techniques by burners. Any techniques used in conjunction with burning that reduce the actual amount of emissions produced from a planned burn project are considered emission reduction techniques. The SIP requires land managers burning SMP–II burns to use at a minimum one emission reduction technique for each planned burn project. SMP–II burners will indicate on the required State registration form the emission reduction technique(s) utilized for each planned burn project (WAQSR Chapter 10, Section 4(g)(i)(C)).

b. Evaluation of Smoke Dispersion

The SIP only allows SMP–I burns to be ignited during daytime hours when there is a slight breeze and there is no population within 0.5 mile of the burn project in the downwind direction. To comply with this requirement, the burner will document the time of day of the planned burn project, the wind direction and wind speed at the time of the burn project, as well as the distance to a population (WAQSR Chapter 10, Section 4(f)(iii)).

For SMP–II burns, the SIP provides the burner with two options pertaining to the dispersion of smoke and burning. A burner can ignite a planned burn project during times when the ventilation is classified as ''Good'' or

[19] Detailed information on the emission inventory is contained in the ENVIRON Report *WRAP Mobile Source Emission Inventories Update,* May 2006. This report is included in the Supporting and Related Materials section of the docket.

better.[20] Also, a burner can ignite a planned burn project during times when the ventilation is classified as ''Fair'' and if there is no population within 10 miles of the planned burn project in the downwind trajectory (WAQSR Chapter 10, Section 4(g)(i)(D)).

c. Alternatives to Fire

The State SIP requires that burners generating over 100 tons per year of PM must consider the use of alternatives to burning. Burners must then document that the use of alternatives to burning were considered prior to the decision to utilize fire. The documentation includes citing the feasibility criterion that prevented the use of alternatives. This documentation must be included on the registration form provided by the State (WAQSR Chapter 10, Section 4(h)).

d. Public Notification

For SMP–I burns, the SIP requires that burners must make a good faith effort to utilize a minimum of one public notification method specified in the SIP to notify the populations that are located within one half mile of the planned burn project. The burner must conduct public notification no sooner than 30 days and no later than two days in advance of the ignition of the planned burn project. In addition, the burner will also notify the jurisdictional fire authority per the requirements of the jurisdictional fire authority,[21] or, absent any such requirements, immediately prior to ignition (WAQSR Chapter 10, Section 4(f)(ii)).

For SMP–II burns, the SIP requires that burners must make a good faith effort to utilize a minimum of one public notification method to notify populations within 10 miles of the planned burn project. The burner must conduct public notification no sooner than 30 days and no later than two days in advance of the ignition of the planned burn project, and will provide documentation of public notification on the State post burn reporting form. In addition, the burner will also notify the jurisdictional fire authority per the requirements of the jurisdictional fire authority or, absent any such requirements, immediately prior to ignition (WAQSR Chapter 10, Section 4(g)(iii)).

e. Air Quality Monitoring

Burners of SMP–I burns are required to attend and observe their planned burn projects periodically (WAQSR Chapter 10, Section 4(f)(iv)). SMP–II burners are required to conduct and document visual monitoring on all planned burn projects. On a case-by-case basis, SMP–II burners may also be required by the State to conduct and document ambient air quality and/or visibility monitoring. The use of monitoring equipment will be based on the planned burn project's proximity to a population, nonattainment area, or Class I area (WAQSR Chapter 10, Section 4(g)(i)(E)).

f. Surveillance and Enforcement

The Wyoming Environmental Quality Act authorizes surveillance, inspection, and enforcement for the State's regulations. WAQSR Chapter 10, Section 4(e)(ii) specifies that burners and responsible jurisdictional fire authorities shall give permission to State staff to enter and inspect for the purpose of investigating a planned burn project or unplanned fire event and for determining compliance or non-compliance.

g. Program Evaluation

The State will evaluate the fire programs in the State as part of the future progress reports required by 40 CFR 51.309(d)(10). The State will use these evaluations to revise Chapter 10, Section 4, as needed. The provisions for program evaluation are included in the *Wyoming Smoke Management Program Guidance Document,* November 2004 (included in the Supporting and Related Materials section of the docket).

2. Inventory and Tracking System

Pursuant to 40 CFR 51.309(d)(6)(ii), the State maintains a fire emission inventory of the following pollutants: VOC, NO_X, elemental carbon, organic carbon, and fine particulate for fire sources within the State (Section E.2 of the SIP). In order to maintain the emission inventory, Chapter 10, Section 4 requires both SMP–I and SMP–II burners to report to the State on emissions from their burns. To track fires, the State uses the WRAP Fire Emission Tracking System (FETS). The FETS is a web-enabled database for planned and unplanned fire events. The FETS is a planning tool for daily smoke management coordination, and retrospective analyses such as emission inventories and regional haze air quality planning tasks (see *http://wrapfets.org*).

3. Strategy for Use of Alternatives to Burning

In section E.3 of the SIP, the State is required to work with key public and private entities to identify and remove administrative barriers to the use of alternatives to burning for prescribed fire on federal, State, and private lands, pursuant to 40 CFR 51.309(d)(6)(iii). The process is collaborative and provides for continuing identification and removal of administrative barriers, and considers economic, safety, technical and environmental feasibility criteria, and land management objectives. Should the State determine that an administrative barrier exists, the State will work collaboratively with the appropriate public and private entities to evaluate the administrative barrier, identify the steps necessary to remove the administrative barrier, and initiate the removal of the administrative barrier, where it is feasible to do so.

4. Enhanced Smoke Management Program

Pursuant to 40 CFR 51.309(d)(6)(iv), the smoke management programs that operate within the State are consistent with the *WRAP Policy on Enhanced Smoke Management Programs for Visibility* (WRAP ESMP). A copy of this policy can be found in the Wyoming TSD. This policy calls for programs to be based on the criteria of efficiency, economics, law, emission reduction opportunities, land management objectives, and reduction of visibility impacts. The intent of the WRAP ESMP is to assist states to address visibility effects associated with fire in a way that is adequate for a SIP (section E.4 of the SIP).

5. Annual Emission Goal

Pursuant to 40 CFR 51.309(d)(6)(v), the State will seek to minimize emission increases in fire through the use of annual emission goal using the policies set out by *Western Regional Air Partnership Policy on Annual Emission Goals for Fire.* A copy of this policy can be found in the Wyoming TSD. The State will use a collaborative mechanism for setting annual emission goals and developing a process for tracking their attainment on a yearly basis. The State will rely on emission reduction techniques, where appropriate, to minimize emission increases in fire (section E.5 of the SIP).

We are proposing that the Sate's SIP meets the requirements of 40 CFR 51.309(d)(6).

[20] Ventilation category is a classification that describes the potential for smoke to ventilate away from its source. The classification (Excellent, Very Good, Good, Fair, Poor) is determined by multiplying the mixing height in feet by the transport winds in knots, thus providing the ventilation category in knot-feet. The ventilation category can be found in the National Weather Service's Fire Weather Forecast, which is the State approved source for this information

[21] Jurisdictional fire authority means an agency, organization, or department whose purpose is to prevent, manage, and/or suppress fires in a designated geographic area, including, but not limited to, volunteer fire departments, fire districts, municipal fire departments, and federal fire staff.

I. Paved and Unpaved Road Dust

WRAP performed an assessment of the impact of dust emissions from paved and unpaved roads on the 16 Class I areas of the Colorado Plateau. The WRAP modeled and calculated the significance of road dust in terms of the impact on visibility on the worst 20 percent days. The modeled regional impact of road dust emissions ranged from 0.31 deciviews at the Black Canyon of the Gunnison National Park to 0.08 deciviews at the Weminuche Wilderness Area. (For more information on the WRAP modeling and assessment of road dust impacts, see Chapter 7 of the WRAP TSD). Based on the WRAP modeling, the State has concluded that road dust is not a significant contributor to visibility impairment in the 16 Class I areas. Since the State has found that road dust is not a significant contributor to visibility impairment, the State did not include road dust control strategies in the SIP pursuant to 40 CFR 51.309(d)(7) (section F.1(b) of the SIP).

The State will track road dust emissions with the assistance of the WRAP and provide an update on paved and unpaved road dust emission trends, including any modeling or monitoring information regarding the impact of these emissions on visibility in the 16 Colorado Plateau Class I Areas. These updates will include a reevaluation of whether road dust is a significant contributor to visibility impairment. These updates shall be part of the periodic implementation plan revisions pursuant to 40 CFR 51.309(d)(10) (section I.1(a) of the SIP).

We propose to determine the State's SIP meets the requirements of 40 CFR 51.309(d)(7).

J. Pollution Prevention

Under 40 CFR 51.309(d)(8), states must provide information on renewable energy and other pollution prevention efforts in the state. 40 CFR 51.309(d)(8) does not require states to adopt any new measures or regulations. Thus, we find the information Wyoming provided adequate to meet the requirements of 40 CFR 51.309(d)(8) as discussed below.

1. Description of Existing Pollution Prevention Programs

Pursuant to 40 CFR 51.309(d)(8)(i), Table G–1 of the SIP summarizes all pollution prevention and renewable energy programs currently in place in Wyoming. The State also determined the renewable energy generation capacity and production in the State and the State's total energy generation capacity and production.

2. Incentive Programs

Per 40 CFR 51.309(d)(8)(ii), section G.4 of the SIP states that the State has provided incentives for early compliance by participating in the 309 regional SO_2 backstop trading program. The backstop trading program allows for early reduction credits. Sources of SO_2 subject to the trading program that reduce emissions prior to the program trigger date shall receive additional emission allowances. The source may use such allowances for compliance purposes or may sell them to other parties.

3. Programs To Preserve and Expand Energy Conservation Efforts

Per 40 CFR 51.309(d)(8)(iii), the State provided a table that discusses the programs within the State that preserve and expand energy conservation efforts. Such programs include the ''Energy Exchange Program'' by PacifiCorp and ''Rebuild America,'' a Department of Energy resource network. For a complete list of programs in the State, see table G–5 of the SIP.

4. Potential for Renewable Energy

Pursuant to 40 CFR 51.309(d)(8)(iv), the State has utilized data from the National Renewable Energy Laboratory to assess areas where there is the potential for renewable energy to supply power in a cost-effective manner. The SIP summarizes the potential for renewable energy development in Wyoming. See Figures G–1 through G–7 of the SIP for more detailed information.

5. Projections of Renewable Energy Goals, Energy Efficiency, and Pollution Prevention Activities

Pursuant to 40 CFR 51.309(d)(8)(v), the State has used projections made by the WRAP of the short and long-term emissions reductions, visibility improvements, cost savings, and secondary benefits associated with renewable energy goals, energy efficiency, and pollution prevention activities. (A complete description of these projections can be found in the Wyoming TSD in a document titled *Economic Assessment of Implementing the 10/20 Goals and Energy Efficiency Recommendations.*) The document provides overall projections of visibility improvements for the 16 Class I areas. These projections include the combined effects of all measures in this SIP, including air pollution prevention programs. Although emission reductions and visibility improvements from air-pollution prevention programs are expected at some level, they were not explicitly calculated because the resolution of the regional air quality modeling system is not currently sufficient to show any significant visibility changes resulting from the marginal NO_X emission reductions expected from air pollution prevention programs.

6. Programs To Achieve the GCVTC Renewable Energy Goal

Pursuant to 40 CFR 51.309(d)(8)(vi), the State will rely on current renewable energy programs as described in section G1 of the SIP to demonstrate progress in achieving the renewable energy goal of the GCVTC. The GCVTC's goal is that that renewable energy will comprise 10 percent of the regional power needs by 2005 and 20 percent by 2015. The State will submit progress reports in 2013 and 2018, describing the State's contribution toward meeting the GCVTC renewable energy goals. To the extent that it is not feasible for the State to meet its contribution to these goals, the State will identify what measures were implemented to achieve its contribution, and explain why meeting its contribution was not feasible.

Pursuant to 40 CFR 51.309(d)(8)(i), Table G–1 of the State's SIP summarizes all pollution prevention and renewable energy programs currently in place in Wyoming. The State's SIP provides an estimate of renewable energy generating capacity in megawatts for each of the renewable energy categories (see Table 12 of the SIP). Total installed generation capacity within Wyoming in 2002 was 5,485 MW. Renewable energy generation capacity in Wyoming represented 0.77 percent of the total installed capacity.

K. Additional Recommendations

As part of the 1996 GCVTC report to EPA, the Commission included additional recommendations that EPA did not adopt as part of 40 CFR 51.309. Pursuant to 40 CFR 51.309(d)(9), the State has evaluated the additional recommendations of the GCVTC to determine if any of these recommendations could be practicably included in the SIP. The State's complete evaluation is included in the State's TSD in a document titled *A Report on Additional Recommendations of the Grand Canyon Visibility Transport Commission.* The State determined that no additional measures were practicable or necessary to demonstrate reasonable progress in the SIP.

We are proposing to determine that the State's SIP meets the requirements of 40 CFR 51.309(d)(9).

L. Periodic Implementation Plan Revisions

Pursuant to 40 CFR 51.309(d)(10)(i), section I of the SIP requires the State to submit to EPA, as a SIP revision, periodic progress reports for the years 2013 and 2018. The State will assess whether current programs are achieving reasonable progress in Class I areas within Wyoming, and Class I areas outside Wyoming that are affected by emissions from Wyoming. The State will address the elements listed under 40 CFR 51.309(d)(10)(i)(A) through (G) as summarized below: (1) Implementation status of 2003 SIP measures; (2) summary of emissions reductions; (3) assessment of most/least impaired days; (4) analysis of emission reductions by pollutant; (5) significant changes in anthropogenic emissions; (6) assessment of 2003 SIP sufficiency; and (7) assessment of visibility monitoring strategy.

Pursuant to 40 CFR 51.309(d)(10)(ii), the State will take one of the following actions based upon information contained in each periodic progress report. The State will provide a negative declaration statement to EPA saying that no SIP revision is needed if the State determines reasonable progress is being achieved. If the State finds that the SIP is inadequate to ensure reasonable progress due to emissions from outside the State, the State will notify EPA and the other contributing state(s), and initiate efforts through a regional planning process to address the emissions in question. If the State finds that the SIP is inadequate to ensure reasonable progress due to emissions from another country, Wyoming will notify EPA and provide information on the impairment being caused by these emissions. If the State finds that the SIP is inadequate to ensure reasonable progress due to emissions from within the State, the State will develop emission reduction strategies to address the emissions and revise the SIP no later than one year from the date that the progress report was due.

We propose to determine that the State's SIP meets the requirements of 40 CFR 51.309(d)(10).

M. Interstate Coordination

Pursuant to 40 CFR 51.309(d)(11), the State has participated in regional planning and coordination with other states by participating in the WRAP while developing its emission reduction strategies under 40 CFR 51.309. Appendix D of the SIP contains detailed information on the interstate coordination programs developed by the WRAP and the State's participation in those programs. The backstop trading program in the SIP and companion rules involved coordination of the three states (Wyoming, Utah, and New Mexico, including Albuquerque) in its development and will continue to involve coordination of the participants once it is implemented.

We propose to determine the State's SIP is consistent with the 40 CFR 51.309(d)(11).

N. Additional Class I Areas

On January 12, 2011, the State submitted a SIP pursuant to 40 CFR 51.309(g) in order to address the State's seven Class I areas not on the Colorado Plateau. EPA is acting on this submission separately.

VI. Proposed Action

In this action, EPA is proposing to approve Wyoming SIP revisions submitted on January 12, 2011 and April 19, 2012 that address the RHR for the mandatory Class I areas under 40 CFR 51.309. EPA is proposing that the January 12, 2011 and April 19, 2012 SIPs meet the requirements of 40 CFR 51.309, with the exception of 40 CFR 51.309(d)(4)(vii), and 40 CFR 51.309(g).

As part of the January 12, 2011 submittal, the State submitted revisions to WAQSR. The State submitted WAQSR Chapter 14, Sections 2 and 3—*Emission Trading Program Regulations.* WAQSR Chapter 14, in conjunction with the SIP, implements the backstop trading program provisions in accordance with the applicable requirements of 40 CFR 51.308 and 40 CFR 51.309. We are proposing to approve WAQSR Chapter 14, Section 2 and Section 3. The State also submitted WAQSR Chapter 10, Section 4—*Smoke Management.* WAQSR Chapter 10, Section 4, in conjunction with the SIP, implements the requirements for smoke management under 40 CFR 51.309(d)(6). We are proposing to approve WAQSR Chapter 10, Section 4.

The State submitted another SIP revision dated January 12, 2011 that addresses the requirements under 40 CFR 51.309(d)(4)(vii) and 40 CFR 51.309(g) pertaining to BART for PM and NO_X and additional Class I areas, respectively. EPA will be taking action on this SIP at a later date. In addition, the January 12, 2011 and April 19, 2012 submittals we are proposing to act on in this notice supersede and replace regional haze SIPs submitted on December 24, 2003, May 27, 2004, and November 21, 2008.

VII. Statutory and Executive Order Reviews

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

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

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

costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 9, 2012.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2012–12643 Filed 5–23–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 721, 795, and 799

[EPA–HQ–OPPT–2010–1039; FRL–9350–8]

RIN 2070–AJ08

Certain Polybrominated Diphenylethers; Significant New Use Rule and Test Rule; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA issued a proposed rule in the **Federal Register** of April 2, 2012, that would amend the Toxic Substances Control Act (TSCA) section 5(a) Significant New Use Rule (SNUR) for certain polybrominated diphenylethers (PBDEs), and that would require persons that manufacture, import, or process any of three commercial PBDEs, including in articles, for any use after December 31, 2013, to conduct testing under TSCA section 4(a). This document extends the comment period for 60 days, from June 1, 2012 to July 31, 2012.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPPT–2010–1039 must be received on or before July 31, 2012.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of April 2, 2012.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Catherine Roman, Chemical Control Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 202–564–8172; email address: *roman.catherine@epa.gov. For general information contact:* The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA–Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

This document extends the public comment period established in the **Federal Register** of April 2, 2012 (77 FR 19862) (FRL–8889–3). In that document, EPA issued a proposed rule that would amend the Toxic Substances Control Act (TSCA) section 5(a) Significant New Use Rule (SNUR) for certain polybrominated diphenylethers (PBDEs). That document also proposed a test rule under TSCA section 4(a) that would require any person who manufactures, imports, or processes any of three commercial PBDEs, including in articles, for any use after December 31, 2013, to conduct testing on their effects on health and the environment. The comment period is being extended in response to requests from the Aerospace Industries Association (AIA), Airlines for America (A4A), and the International Air Transport Association (IATA). EPA is hereby extending the comment period, which was set to end on June 1, 2012, to July 31, 2012. To submit comments, or access the docket, please follow the detailed instructions as provided under **ADDRESSES** in the April 2, 2012 **Federal Register** document. If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Premanufacture notification, Reporting and recordkeeping requirements.

40 CFR Part 795

Environmental protection, Chemicals, Hazardous substances, Health, Laboratories, Reporting and recordkeeping requirements.

40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Laboratories, Reporting and recordkeeping requirements.

Dated: May 18, 2012.

James Jones,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2012–12625 Filed 5–23–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 11–116 and 09–158; CC Docket No. 98–170; FCC 12–42]

Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (''Cramming''); Consumer Information and Disclosure; Truth-in-Billing Format

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) proposes additional rules to help consumers prevent and detect the placement of unauthorized charges on their telephone bills, an unlawful and fraudulent practice commonly referred to as ''cramming.'' Several commenters in this proceeding support additional measures to prevent cramming, including requiring wireline carriers to obtain a consumer's affirmative consent before placing third-party charges on telephone bills (*i.e.* ''opt-in''). There also is support for adopting anti-cramming rules for Commercial Mobile Radio Service (CMRS) and Voice over Internet Protocol (VoIP) service. The Commission seeks further comment on whether it should take additional steps to prevent wireline cramming, including ''opt-in'', possible solutions to CMRS cramming, and any developments of VoIP cramming.

DATES: Interested parties may file comments on or before June 25, 2012, and reply comments on or before July 9, 2012.

ADDRESSES: You may submit comments, identified by CG Docket No. 11–116, by any of the following methods:

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site *http://fjallfoss.fcc.gov/ecfs2/*. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and CG Docket No. 11–116.
- Paper filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission

continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial Mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street SW., Washington, DC 20554.

▪ In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, or via email to *fcc@bcpiweb.com*.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Lynn Ratnavale, *Lynn.Ratnavale@fcc.gov* or (202) 418–1514, or Melissa Conway, *Melissa.Conway@fcc.gov* or (202) 418–2887, of the Consumer and Governmental Affairs Bureau, Consumer Policy Division.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rulemaking (*FNPRM*), FCC 12–42, adopted on April 27, 2012, and released on April 27, 2012, in CG Docket Nos. 11–116 and 09–158, and CC Docket No. 98–170. Simultaneously with the *FNPRM,* the Commission also issued a Report and Order in CG Docket Nos. 11–116 and 09–158, and CC Docket No. 98–170. The full text of the *FNPRM* and copies of any subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplication contractor at its Web site, *www.bcpiweb.com*, or by calling (202) 488–5300. Document can also be downloaded in Word or Portable Document Format (PDF) at *http://www.fcc.gov/guides/cramming-unauthorized-misleading-or-deceptive-charges-placed-your-telephone-bill.*

Pursuant to 47 CFR 1.1200 *et seq.,* this matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

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

Initial Paperwork Reduction Act of 1995

The *FNPRM* seeks comment on potential new information collection requirements. If the Commission adopts any new information collection requirement, the Commission will publish another notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Synopsis

1. In the *FNPRM,* the Commission seeks comment on additional potential measures to prevent cramming, including an ''opt-in'' requirement for wireline carriers. The *FNPRM* also seeks comment on possible solutions to CMRS cramming and any developments on VoIP cramming.

2. The record reflects significant concern that bill formatting changes and greater transparency alone are not sufficient to deter the widespread problem of cramming. Commenters suggest a number of stronger measures, such as prohibiting all or most third-party charges from being placed on telephone bills or requiring carriers to obtain a consumer's affirmative consent before placing third-party charges on their own bills to consumers (''opt-in''). Consumer groups argue that a requirement for consumer consent or an affirmative opt-in to receive third-party charges should apply to consumers' wireline, VoIP, and/or CMRS bills and that any requirement to separate third-party charges on the bills of those consumers who opt-in should apply across all platforms. The Commission seeks additional comment on whether it should adopt additional measures, such as an opt-in approach, and, if so, the best way to implement them. To adequately evaluate an opt-in approach, a more detailed record is needed, especially with respect to the structure and mechanics of an opt-in approach and how opt-in could be implemented for existing consumers whose carrier already may be placing non-carrier third-party charges on their telephone bills. The Commission also seeks to bolster the record with respect to its authority to adopt additional anti-cramming measures.

3. The Commission seeks additional comment on whether an ''opt-in'' approach is warranted and how it should be structured. Should an opt-in requirement apply only to new consumers or to all consumers? If ''opt-in'' should only apply to new

consumers or some other subset of existing consumers, then what is the basis—both factual and legal—for such a distinction? What are the distinguishing characteristics of each subset of consumers and their respective risk of being crammed that may justify disparate treatment? Should an opt-in requirement, if adopted, apply to all third-party charges or should third-party charges for telecommunications services be exempt? Should the exemption apply to all third-party telecommunications services? Would consumers likely benefit from an ''opt-in'' mechanism with respect to non-telecommunications-related third-party charges? Would consumers adequately anticipate the need for third-party billing before they opt-in or opt-out? Are there any analogous opt-in requirements that might inform our decisions here? Would the benefits to consumers be different under one opt-in structure versus another? Would an opt-in approach be more or less warranted if it applied only to new consumers?

4. Assuming the Commission decides to adopt an ''opt-in'' approach, the secondary set of issues revolves around how an ''opt-in'' measure should be implemented from a practical standpoint. Should the Commission adopt an all-or-nothing opt-in where the consumer has an opportunity to opt-in or reject all third-party charges, including long distance carrier charges? Should the consumer have the choice to opt-in or reject carrier and non-carrier charges separately, or should the consumer have an opportunity to indicate that they choose not to receive third-party billing charges unless or until they are consulted about specific individual charges from third parties?

5. With respect to procedure, there is the question of the best format for implementing the ''opt-in'' mechanism. What would be the best procedures to obtain a consumer's opt-in to third-party charges?

6. The Commission seeks comment on the specific costs of the measures discussed in the *FNPRM,* and ways the Commission might mitigate any implementation costs. Do smaller wireline carriers face unique implementation costs and, if so, how might we address those concerns?

7. The Commission also seeks comment on where and when a consumer should be made aware of the opportunity to opt-in to third-party billing charges. Should carriers inform consumers at the point of sale, such as during the telephone conversation between the consumer and the carrier's customer service representative or while using online sign-up procedures? Should notification of the option to opt-in also appear in Web site, print, or in-store advertising? Should existing consumers be informed on their bills? Should the consumer's current opt-in status be disclosed on every bill so that he or she will know whether to be looking for such charges on that bill? The Commission seeks comment regarding the duration of each opt-in approval and what happens when a consumer decides to revoke a prior opt-in approval or to give new opt-in approval. What procedures should be required for a consumer to change an opt-in election? Should a consumer be able to opt-in to specific types of third-party charges, from a specific third party, or for a specific period of time? Do carriers have the technical ability to distinguish such charges today and, if not, what would be the cost to obtain that ability? The Commission seeks comment on the level of consumer interest in this type of ''opt-in'' approach, the potential consumer benefits, as well as the complexity and costs such a scenario poses for carriers.

8. Are there additional measures the Commission could take to combat cramming? Are there measures beyond an ''opt-in'' approach or alternative approaches that we should consider and might be more effective at combating cramming?

9. Cramming appears to be less a problem for CMRS consumers than for wireline consumers, but it may be on the rise. The Commission seeks comment on potential regulatory and non-regulatory measures to address the issue. Are there technological solutions that might help consumers, such as apps for mobile phones? What steps has industry taken to date and what steps might it take in the future to protect CMRS consumers? Are there any steps the Commission should consider to help CMRS consumers combat cramming? To the extent that cramming issues develop for VoIP services, the Commission seeks comment about that issue and answers to the above questions. The Commission requests that commenters address implementation costs of any other proposed anti-cramming measures and any questions of legal authority.

10. The Commission seeks comment on the respective roles of carriers and billing aggregators in screening charges for purposes of existing blocking options and how these roles might change if the Commission adopts an ''opt-in'' requirement.

11. The Commission seeks comment on its authority to adopt an ''opt-in'' requirement. Would the Commission's section 201(b) authority to regulate practices ''for and in connection with'' telecommunications services support such requirements? Does the Commission's Title I ancillary authority provide support for such requirements? Are there other sources of authority? Would such measures present First Amendment concerns, and, if so, how might the Commission address those concerns?

Initial Regulatory Flexibility Act Analysis

12. As required by section 603 of the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *FNPRM.* Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines indicated in the **DATES** section of this document. The Commission will send a copy of the *FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Need for, and Objectives of, the Proposed Rules

13. The *FNPRM* contains proposals that: (1) A carrier, if it already offers blocking, ask all new subscribers whether they would like to ''opt-in'' to blocking of third-party charges on their bills and record the subscriber's election for purposes of blocking or not blocking third-party charges on that subscriber's bill; and (2) carriers that already offer blocking include on all telephone bills and on their Web sites for use by existing customers, information about the option to block third-party charges from their telephone bills and record any subsequent request by a current customer to block or not block third-party charges on that subscriber's bill.

14. The record reflects that cramming primarily has been an issue for wireline telephone consumers. The rules adopted in the Report and Order do not address aspects of cramming which are being considered in the *FNPRM,* including growth in CMRS cramming and how the Commission should address any cramming issues that develop for VoIP services. Adopting further requirements will provide consumers with additional safeguards.

Legal Basis

15. The legal basis for any action that may be taken pursuant to the *FNPRM* is contained in sections 1–2, 4, 201, 258, and 403 of the Communications Act of 1934, as amended 47 U.S.C. 151–152, 154, 201, 258, and 403.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

16. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA. The *FNPRM* seeks comment generally on mobile providers of voice, text, and data services. However, as noted in Section IV of the *FNPRM,* the Commission seeks comment on the scope of entities that should be covered by the proposals contained therein.

17. *Incumbent Local Exchange Carriers (''Incumbent LECs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the adopted rules and policies. Thus, under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small.

18. *Competitive Local Exchange Carriers (''Competitive LECs''), Competitive Access Providers (''CAPs''), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year.

19. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by the adopted rules.

20. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the *FNPRM.*

21. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 show that there were 1,383 firms that operated that year. Of those, 1,368 firms had fewer than 100 employees, and 15 firms had more than 100 employees. Thus, under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) telephony services. An estimated 261 of these firms have 1,500 or fewer employees and 152 firms have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms are small.

22. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.

23. According to Commission data, 434 carriers report that they are engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees, and 212 have more than 1,500 employees. Therefore, the Commission estimates that 222 of these entities can be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

24. The *FNPRM* contains proposals that: (1) A carrier, if it already offers blocking, ask all new subscribers whether they would like to ''opt-in'' to blocking of third-party charges on their bills and record the subscriber's election for purposes of blocking or not blocking third-party charges on that subscriber's bill; and (2) carriers that already offer blocking include on all telephone bills and on their Web sites for use by existing customers, information about the option to block third-party charges from their telephone bills and record any subsequent request by a current customer to block or not block third-party charges on that subscriber's bill.

25. These proposed rules may necessitate that some carriers make changes to their existing billing formats and/or disclosure materials which would impose some additional costs to carriers. However, some carriers may already be in compliance with many of these requirements and therefore, no additional compliance efforts will be required.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

26. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

27. Any economic burden these proposed rules may have on carriers is outweighed by the benefits to consumers. However, in the *FNPRM,* the Commission specifically asks how to minimize the economic impact of our proposals. For instance, the Commission seeks comment on the specific costs of the measures discussed in the *FNPRM,* and ways the Commission might mitigate any implementation costs. The Commission also particularly asks whether smaller carriers face unique implementation costs and, if so, how the Commission might address those concerns. In addition, for example, the Commission seeks comment on alternatives for how a carrier should obtain a consumer's opt-in to third-party charges, if the Commission decides to adopt an ''opt-in'' approach. Finally, the Commission seeks comment on the overall economic impact these proposed rules may have on carriers because it seeks to minimize all costs associated with these proposed rules.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

28. None.

Ordering Clauses

29. Pursuant to the authority contained in sections 1–2, 4, 201, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–152, 154, 201, and 403, the *FNPRM is adopted.*

30. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *FNPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2012–12670 Filed 5–23–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, 174, 175, 176, 178, 180

[Docket No. PHMSA–2011–0142 (HM–219)]

RIN 2137–AE79

Hazardous Materials: Miscellaneous Petitions for Rulemaking (RRR)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In response to petitions for rulemaking submitted by the regulated community, PHMSA proposes to amend the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) to update, clarify, or provide relief from miscellaneous regulatory requirements. Specifically, PHMSA is proposing to amend the recordkeeping and package marking requirements for third-party labs and manufacturers to assure the traceability of packaging; clarify an acceptable range in specifications for resins used in the manufacture of plastic drums and Intermediate Bulk Containers (IBCs); remove the listing for ''Gasohol, gasoline mixed with ethyl alcohol, with not more than 10% alcohol, NA1203''; harmonize internationally and provide a limited quantity exception for Division 4.1, Self-reactive solids and Self-reactive liquids Types B through F; allow smokeless powder classified as a Division 1.4C material to be reclassified as a Division 4.1 material to relax the regulatory requirements for these materials without compromising safety; and provide greater flexibility by allowing the Dangerous Cargo Manifest to be in locations designated by the master of the vessel besides ''on or near the vessel's bridge'' while the vessel is in a United States port.

DATES: Comments must be received by July 23, 2012.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Dockets Management System; U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* To U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: Include the agency name and docket number PHMSA–2011–0142 (HM–219) or the Regulatory Identification Number (RIN) 2137–AE79 for this notice of proposed rulemaking at the beginning of your comment. Please note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, 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), or you may visit *http://www.regulations.gov.*

Docket: Access to ASTM D4976–06, Standard Specification for Polyethylene Plastics Molding and Extrusion Materials, discussed in this NPRM is available for public review during the

comment period at: *http://www.astm.org/usdot*. You may view the public docket through the Internet at *http://www.regulations.gov,* or in person at the Docket Operations office at the above address (See **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Lisa O'Donnell at (202) 366–8553 at the Office of Hazardous Materials Standards, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The Administrative Procedure Act (APA) requires Federal agencies to give interested persons the right to petition an agency to issue, amend, or repeal a rule (5 U.S.C. 553(e)). PHMSA's rulemaking procedure regulations, in 49 CFR 106.95, provide for persons to ask PHMSA to add, amend, or delete a regulation by filing a petition for rulemaking containing adequate support for the requested action. In this NPRM, PHMSA (also ''we'' or ''us'') proposes to amend the HMR in response to petitions for rulemaking submitted by shippers, carriers, manufacturers, and industry representatives. These proposed revisions are intended to reduce regulatory burdens while maintaining or enhancing the existing level of safety. We discuss the petitions and proposals in detail in Section II of this NPRM. The following is a brief summary of the proposed regulatory changes.

- Revise § 178.3 to clearly indicate that a manufacturer or third-party laboratory mark may not be used when continued certification of a packaging is conducted by someone other than the original manufacturer or third-party testing laboratory, unless specifically authorized by the original manufacturer or third-party testing laboratory;
- Revise §§ 178.601(l), 178.801(l) and 178.955(i) to relax the record retention requirements for package test reports and provide a chart to clearly identify the retention requirements;
- Revise the Hazardous Materials Table (HMT; 49 CFR 172.101) by removing the listing for ''Gasohol, gasoline mixed with ethyl alcohol, with not more than 10% alcohol, NA1203''; and remove reference to gasohol in Sections §§ 172.336(c)(4) and 172.336(c)(5) as gasohol is a blend of gasoline with not more than 10% ethyl alcohol and the listing for gasoline includes gasoline mixed with ethyl alcohol, with not more than 10% alcohol;
- Revise § 172.101 to refer to § 173.151 to harmonize internationally and provide a limited quantity exception for 4.1, Self-reactive solids and Self-reactive liquids, Types B through F;
- Address a petition that asks that we extend the relief provided by Special Permit DOT–SP–14652 by incorporating it in the HMR and allowing the transport of certain hazardous materials in IM101 portable tanks under T Codes in effect on September 30, 2001;
- Allow smokeless powder classified as a Division 1.4C material to be reclassified as a Division 4.1 material to relax the regulatory requirements for these materials without compromising safety;
- Add a reference in 49 CFR 178.601(c)(4) and 178.801(c)(7) to ASTM D4976–06 Standard Specification for Polyethylene Plastics Molding and Extrusion Materials to provide a range of acceptable resin tolerances in the plastic drum and IBC material; and
- Provide greater flexibility by allowing the Dangerous Cargo Manifest (DCM) to be in locations designated by the master of the vessel besides ''on or near the vessel's bridge'' while the vessel is in a United States port to ensure that the DCM is readily available to communicate to emergency responders and enforcement personnel the presence and nature of the hazardous materials on board a vessel.

II. Proposals in This NPRM

A. Certification Package Marking and Recordkeeping Requirements (P–1479)
B. Clarification of Alcohol and Gasoline Mixtures (P–1522)
C. Self-Reactive Solid Type F (P–1542)
D. Plastic Drum and IBC Material Thickness Standards (P–1554) and (P–1564)
E. SP 9735, Dangerous Cargo Manifest Location (P–1556)
F. Table of Portable Tank T Codes TI—T–22 (P–1558)
G. Smokeless Powder, Division 1.4C (P–1559)

A. Certification Package Marking and Recordkeeping Requirements (P–1479)

In a petition for rulemaking (P–1479), gh Package & Product, Testing and Consulting, Inc. requests that PHMSA consider amending the HMR to indicate that an entity performing continued package certification is not allowed to use the original manufacturer's or third-party laboratory's mark unless authorized by the manufacturer or third-party laboratory; and that package test reports are kept for a limited time instead of the current requirement of ''until the package is no longer manufactured.''

Regarding the first issue, the petitioner states that his laboratory tested a package at least three times, and the package failed each time. Eleven years after the petitioner had tested the package, he learned that the package that had failed in his laboratory was still being manufactured and that the petitioner's symbol was being used on the package as the package tester's mark. For these reasons, the petitioner is concerned that the regulations expose the manufacturer and the original third-party test laboratory to potential liability for defective packaging and other packaging violations.

The current regulations provide the person who is certifying compliance of a package the option of marking the package with a symbol rather than the company name and address provided that the symbol is registered with PHMSA's Associate Administrator for Hazardous Materials Safety. While it is implied that the symbol being used is that of the person who has registered the symbol, it is not explicit. The petitioner has indicated that since the regulations do not specify who is authorized to use the mark, some third-party retesters who did not initially certify the package are using the original third-party laboratory's symbol to certify compliance. While the symbol is associated with the original manufacturer or third-party laboratory, that entity has no control over the package being retested by someone else.

Regarding the second issue, the petitioner explains that the record retention requirements indicate that the test report must be maintained at each location where the packaging is manufactured and each location where the design qualification tests are conducted for as long as the packaging is produced and for at least two years thereafter. According to petitioner, often the original manufacturer or third-party laboratory is not aware that a package is still being made. The petitioner seeks relief from the paperwork burden.

In this NPRM, PHMSA is proposing to revise § 178.3 to clearly indicate that the required marking must identify the person who is certifying that the packaging meets the applicable UN Standard. Further, for continued certification of the packaging through periodic retesting, the marking must identify the person who certifies that the packaging continues to meet the applicable UN Standard.

In addition, to address concerns raised by the petitioner regarding an open-ended paperwork burden, we are proposing to revise § 178.601(l), which specifies recordkeeping requirements for testing non-bulk packaging; § 178.801(l), which specifies recordkeeping requirements for testing IBCs; and § 178.955(i), which specifies

recordkeeping requirements for testing large packagings. In doing so, we propose to limit the document retention period for persons conducting initial design testing to five years beyond the next required periodic retest. In addition, we provide a chart to clearly identify the current retention requirements for test reports.

B. Clarification of Alcohol and Gasoline Mixtures (P–1522)

In its petition (P–1522), Shell Chemicals asks PHMSA to remove from the HMT the listing for ''Gasohol, with not more than 10% ethanol.'' Shell states that the proper shipping names for ''Gasoline, includes gasoline mixed with ethyl alcohol (ethanol), with not more than 10% alcohol'' and ''Ethanol and gasoline mixture or Ethanol and motor spirit mixture or Ethanol and petrol mixture with more than 10% ethanol,'' provide the necessary entries for accurate and specific descriptions of these fuel blends. Consistent with the removal of gasohol from the HMT, Shell Chemicals asks that we remove reference to gasohol in § 172.336(c)(4) and 172.336(c)(5), which contain hazard communication requirements for compartmented cargo tanks, tank cars, or cargo tanks containing these fuels. These provisions were amended as the result of a final rule issued on January 28, 2008 under Docket HM–218D (73 FR 4699) intended to help emergency responders identify and respond to the hazards unique to fuel blends with high ethanol concentrations.

In the January 28, 2008 final rule, we revised the entry for ''Gasohol, gasoline mixed with ethyl alcohol, with not more than 20% alcohol'' to limit the applicability of the entry to gasoline mixtures with not more than 10% alcohol. In addition, we amended the listing for Gasoline, to read ''Gasoline, includes gasoline mixed with ethyl alcohol, with not more than 10% alcohol.'' At the time, Shell suggested that we remove the entry ''Gasohol, NA1203'' and revise the entry for ''Gasoline'' to add a special provision that specifically communicates to shippers that the entry ''Gasoline'' may be used for gasoline and ethanol blends with not more than 10% ethanol for use in spark ignition engines. While we agreed then that Shell's suggestion had merit, we did not remove the entry ''Gasohol'' in HM–218D. We did however revise the entry ''Gasoline'' to allow for that description to be used for gasoline and ethanol blends with not more than 10% ethanol.

Shell Chemicals also petitions for the removal of Special Provision 172 from Column 7 in association with all packing groups for the Proper Shipping Name ''Alcohols, n.o.s.'' Special Provision 172 states that ''this entry includes alcohol mixtures containing up to 5% petroleum products.'' Shell indicates that a blend of 5% gasoline and 95% alcohol is not an alcohol solution as indicated in Special Provision 172. They object to the term ''solution'' because under certain conditions such as low temperatures, these materials can separate. For these reasons, Shell states that these blends should not be permitted to be transported under the Alcohols, n.o.s., UN1987; rather, Denatured alcohol, NA 1987, and Ethanol and gasoline mixture or Ethanol and motor spirit mixture or Ethanol and petrol mixture, UN 3475, are more appropriate descriptions. While we agree that Denatured alcohol is a more accurate description, this proper shipping name applies to domestic shipments only and may not be available to imported shipments. Retaining reference to Special Provision 172 in the listing for Alcohols, n.o.s. would continue to provide a listing for international shipments of alcohol mixtures containing up to 5% petroleum products.

We agree that the proper shipping names for ''Gasoline, includes gasoline mixed with ethyl alcohol, with not more than 10% alcohol,'' and ''Ethanol and gasoline mixture or Ethanol and motor spirit mixture or Ethanol and petrol mixture with more than 10% ethanol,'' provide the necessary entries for accurate and specific description of these fuel blends. We also agree that the proper shipping name for ''Alcohol, n.o.s.'' is not as specific as the listings for Gasoline, including gasoline mixed with ethyl alcohol, with not more than 10% alcohol, and Ethanol and gasoline mixture or Ethanol and motor spirit mixture or Ethanol and petrol mixture with more than 10% ethanol. As such, we propose to amend the HMT by removing the listing for ''Gasohol, gasoline mixed with ethyl alcohol, with not more than 10% alcohol.'' We also propose to revise § 172.336 to remove all references to ''gasohol'' and to add a table to more clearly indicate hazard communication requirements for compartmented cargo tanks, tank cars, or cargo tanks containing these fuels.

C. Self-Reactive Solid Type F (P–1542)

In a petition (P–1542), the Association of Hazmat Shippers (AHS) requests that we amend the HMT to refer to § 173.151, exceptions for Class 4, to provide the limited quantity exception for Self-reactive solid, Type F materials, consistent with international regulations.

According to the petitioner, imports of this material may be handled as limited quantities, but domestic shipments must be treated as fully regulated hazardous materials. They indicate that this situation has led to confusion and frustration, particularly upon reshipment of the same products either in the United States or internationally.

In the interest of international harmonization and clarification, we propose to expand on the AHS petition and seek to authorize all eligible self-reactive liquid and solid material as limited quantities in accordance with the type and quantity of substances authorized in the UN Model Regulations. Accordingly, we propose to authorize types B through F non-temperature controlled liquid and solid self-reactive materials as limited quantities by amending the listings in the HMT for Self-reactive solids and Self-reactive liquids, Types B through F, to add references in column 8(a) in the HMT to § 173.151 to allow limited quantities of Self-reactive solids and Self-reactive liquids, Types B through F materials to be excepted from labeling and placarding requirements as long as the materials meet the provisions of § 173.151.

D. Plastic Drum and IBC Material of Construction Standards (P–1554) and (P–1564)

In two petitions (P–1554 and P–1564), Rigid Intermediate Bulk Container Association (RIBCA) and the Plastic Drum Institute (PDI) have indicated that their members have been cited for ''probable violations'' for a number of reasons pertaining to changes in material construction in their plastic drums and IBCs. These reasons include: Using multiple suppliers for a material of construction; differences in the material of construction; changes in material suppliers without performing design tests; and changes within the material suppliers accepted specifications for melt flow and density. In an effort to ensure safety and compliance when receiving each order of resin, RIBCA and PDI ask that we incorporate by reference ASTM D4976–06, Standard Specification for Polyethylene Plastics Molding and Extrusion Materials, which provides standard requirements for polyethylene plastic molding and extrusion materials. The petitioners request that we add a reference to ASTM D4976–06. The petitioners further ask that PHMSA revise the HMR to state that plastic drums or IBCs made from polyethylene meeting ASTM D4976–06 do not constitute a different package.

We believe that this petition has merit in that it would provide acceptable ranges for the polyethylene plastics molding and extrusion materials used in the production of plastic drums and IBCs. For that reason we propose to incorporate by reference in § 171.7 ASTM D4976–06, Standard Specification for Polyethylene Plastics Molding and Extrusion Materials, and revise §§ 178.509(b)(1) and 178.707(c)(3) to include reference to ASTM D4976–06.

With respect to the request that we revise the HMR to state that plastic drums or IBCs made from polyethylene within the same density category of ASTM D4976–06 do not constitute a different package, we do not have sufficient package testing data, such as performance test results and transportation experience, to show whether the ranges allowed for plastic molding in ASTM D4976–06 provide adequate strength and consistency when used as a component in packagings for transporting hazardous materials. For this reason, we are not proposing to make that change.

E. SP 9735, Dangerous Cargo Manifest (DCM) Location (P–1556)

The International Vessel Operators Dangerous Goods Association (IVODGA) (formerly known as the International Vessel Operators Hazardous Materials Association, Inc.) has asked in a petition (P–1556) that PHMSA revise the requirements for where the DCM is kept onboard when the vessel is docked in a United States port. Section 176.30(a) requires the DCM be ''kept in a designated holder on or near the vessel's bridge.'' According to IVODGA, when a vessel is underway, the bridge is occupied at all times and the DCM is readily accessible; however, when a vessel is docked in port during loading and unloading operations, the bridge is often left unattended and locked for security purposes. Thus, the requirement to keep the DCM on or near the vessel's bridge at all times is contrary to the purpose of the DCM, which is to be readily available to communicate to the crew and emergency responders the presence and nature of the hazardous materials on board a vessel.

Given the impractical maintenance of the DCM on or near the vessel's bridge while docked in port, IVODGA requests that PHMSA allow the DCM to be kept in a place other than the bridge of the vessel. Hapag-Lloyd AG currently holds a special permit (DOT–SP 9735) which authorizes the DCM ''to be retained in a location other than on or near the bridge'' while subject vessels are in port. The permit requires the DCM to be maintained either in the vessel's cargo office or another location designated by the master of the vessel. The permit further requires the DCM to be readily accessible to emergency responders, and for a sign to be placed in the designated holder on or near the vessel's bridge indicating the location of the DCM while the vessel is in port. During loading and discharging operations, the vessel's cargo office is manned and a working copy of the DCM is updated as hazardous materials are loaded and discharged. This working copy, therefore, would contain the most complete and correct information concerning hazardous materials aboard the vessel at any time during the loading/discharging process. The cargo office would also be readily accessible in an emergency, so the DCM would be immediately available to first responders.

We agree with the petitioner that the DCM should be allowed to be in locations designated by the master of the vessel besides ''on or near the bridge'' while the vessel is docked in a United States port while cargo unloading, loading, or handling operations are underway and the bridge is unmanned. The location of the DCM chosen by the master must be readily accessible to emergency personnel in an emergency and enforcement personnel for inspection purposes. Allowing alternate locations of the DCM while the vessel is docked provides greater flexibility to the master without diminishing the DCM requirements and for this reason we propose to incorporate DOT–SP 9735 into § 176.30 of the HMR.

F. Table of Portable Tank T Codes TI—T–22 (P–1558)

In a petition dated April 12, 2010 (P–1558), Magnum Mud Equipment Company asked PHMSA to amend the HMR to allow certain Class 3 materials to be transported in IM 101 portable tanks, in accordance with the applicable T Codes in effect on September 30, 2001. The petitioner owns approximately six hundred, 1,060 gallon IM 101 tanks used to support the oil and gas industry in the Gulf of Mexico. The tanks were built in accordance with IM 101 requirements and were allowed to transport hazardous materials commonly used in the oilfield. As a result of changes made to the HMR in final rule under Docket HM–215D (66 FR 33316), in January 2010, several Hazard Class 3 materials were no longer allowed to be transported in IM 101 tanks, but rather were required to move in tanks specified in the new T Codes. The petitioner's interest is to allow its equipment and the equipment of other companies servicing the oil and gas industry to remain viable methods of transport to the industry.

A few owners of IM 101 tanks applied for and were granted a special permit authorizing the use of the IM 101 tanks beyond January 2010. The permit (DOT SP–14652) authorized the transport of UN1193, Ethyl methyl ketone or Methyl ethyl ketone, Hazard Class 3, Packing Group II; UN1203, Gasoline, Hazard Class 3, Packing Group II; UN1230, Methanol, Hazard Class 3, Packing Group II; UN1268, Petroleum distillates, n.o.s. or Petroleum products, n.o.s., Hazard Class 3, Packing Group II or III; and NA1270, Petroleum oil, Hazard Class 3, Packing Group II or III, to be transported in IM 101 portable tanks under T Codes in effect on September 30, 2001. The special permit required that each tank must pass the periodic inspection and test requirements prescribed in § 180.605 for UN portable tanks. Further, the portable tanks were not to be used for the transportation of hazardous materials after January 1, 2025.

On June 4, 2010, PHMSA issued a letter indicating its intent to suspend Special Permit DOT–SP–14652 pending review of information requested of its grantees. Grantees were asked to provide the following information: The number of portable tanks that are operating under the special permit; the number of tanks no longer in service and the reason why they were removed from service; for each portable tank, whether in service or not, the manufacturer's name, build date, original test date, serial number, designated approval agency, water capacity in gallons, maximum allowable working pressure, shell thickness, the date and type of last periodic inspection and retest including name and addresses of entity performing the work; if the portable tank is equipped with bottom outlets, information on the number of independent shut off devices; if remote closure and/or thermal activation features are present, number and type of pressure relief devices including the set pressure, and whether or not the tank is equipped with a flame screen; for portable tanks that have been modified, including replacement or welding to frame members, addition or reconfiguration of lift lugs, information on the modification or repair to include the date, designated approval agency, drawing and or specification with bill of materials, if requested modification was previously denied and copy of new approval certificate if applicable.

On May 26, 2011, following its review of the information grantees provided, PHMSA suspended Special Permit DOT–SP–14652. In its letter of suspension, PHMSA indicated that the special permit does not achieve an equivalent level of safety to maintain the safety of people, property and the environment as required by regulation. On June 10, 2011, Magnum Mud Equipment Company appealed our decision to suspend the special permit.

Predicated on our safety review of the IM 101 tanks that are the subject of this petition, we remain of the opinion that they do not achieve an equivalent level of safety to maintain the safety of people, property and the environment as required by regulation. For this reason, we are denying petition P–1558 and will not incorporate DOT–SP–14652 into the HMR.

G. Smokeless Powder, Division 1.4C (P–1559)

The Sporting Arms and Ammunition Manufacturers Institute, Inc (SAAMI), in a petition (P–1559), asks PHMSA to amend § 173.171 to allow Division 1.4C smokeless powder to be reclassified as a Class 4.1 material. Currently § 173.171 allows smokeless powder for small arms that has been classed in Division 1.3C (Explosive) to be reclassified for domestic transportation as a Class 4.1 (Flammable Solid) material for transportation by motor vehicle, rail car, vessel, or cargo-only aircraft, subject to certain conditions.

In a final rule published on January 14, 2009 under Dockets HM–215J and HM–224D (74 FR 2199) PHMSA added a new description to the HMT for Powder, smokeless, Division 1.4C; however, the rule did not extend the allowance provided for Division 1.3C to the Division 1.4C materials.

The petition maintains an equivalent or greater level of safety to the existing regulations. It seeks, with proper examination and approval, to allow a Division 1.4C material which, by definition (see § 172.50), poses the lesser safety risk when compared with Division 1.3 explosives, to be reclassified as a Division 4.1 material.

We believe that this petition has merit, as Division 1.4 explosives pose less of a hazard in transportation than Division 1.3 explosives, which are already allowed to move as Class 4.1 materials. Incorporating this change into § 173.171 will reduce the burden associated with transportation and storage of smokeless powder currently transported as a Division 1.4C explosive.

III. Section-by-Section

Below is a section-by-section description of the changes being proposed in this NPRM:

§ 171.7

Section 171.7 lists all standards incorporated by reference into the HMR that are not specifically set forth in the regulations. In this NPRM, PHMSA is proposing to incorporate by reference ASTM D4976–06 Standard Specification for Polyethylene Plastics Molding and Extrusion Materials to provide acceptable ranges in the specifications for the resin used in the production of plastic drums and IBCs.

§ 172.101

This section provides a hazardous materials table (HMT) that identifies listed materials as hazardous material for purposes of transportation and special provisions referred to in the HMT. In this NPRM, PHMSA is proposing to revise the HMT by removing the listing for ''Gasohol, gasoline mixed with ethyl alcohol, with not more than 10% alcohol, NA1203.'' It also seeks to revise the 10 table entries for ''Self-reactive liquid'' and ''Self-reactive solid'', types B through F, non-temperature controlled, by adding a reference to Section 173.151 in column (8A).

§ 172.336

This section provides identification number marking requirements and exceptions for certain transport vehicles and freight containers. In this NPRM, PHMSA is proposing to revise § 172.336 to remove all references to ''gasohol.'' In addition, we are proposing to add a table that will more clearly indicate the identification number marking requirements for compartmented cargo tanks, tank cars, or cargo tanks containing these fuels.

§ 173.151

This section provides exceptions for Class 4 materials. PHMSA is proposing to revise this section by adding paragraphs (b)(1)(ii) and (b)(1)(iii) that prescribe limited quantity requirements for Types B through F self-reactive liquids and solids (non-temperature controlled).

§ 173.171

This section provides exceptions for the transportation of smokeless powder for small arms. Currently § 173.171 allows smokeless powder for small arms that has been classed in Division 1.3 (Explosive) to be reclassified for domestic transportation as a Class 4.1 (Flammable Solid) material for transportation by motor vehicle, rail car, vessel, or cargo-only aircraft, subject to certain conditions. In this NPRM, PHMSA is proposing to amend § 173.171 to also allow Division 1.4 smokeless powder to be reclassified as a Class 4.1 material.

§ 176.30

Section 176.30 specifies the regulations pertaining to the DCM for transportation by vessel. In this NPRM, PHMSA is proposing to revise this section to allow the DCM to be in locations designated by the master of the vessel besides ''on or near the bridge'' while the vessel is docked in a United States port.

§ 178.3

This section specifies marking on packagings represented as manufactured to a DOT specification or a UN standard. In this NPRM, PHMSA is proposing to revise § 178.3 to clearly indicate that the required marking must identify the person who certifies that the packaging meets the applicable UN Standard.

§ 178.509

Section 178.509 specifies standards for plastic drums. In this NPRM, PHMSA is proposing to amend this section to reference ASTM D4976–06 Standard Specification for Polyethylene Plastics Molding and Extrusion Materials to provide acceptable ranges in the specifications for the resin used in the production of plastic drums.

§ 178.601

This section provides the general requirements for testing non-bulk packagings and packages. In this NPRM, PHMSA is proposing to revise paragraph (l) of section 178.601 to limit the document retention period for persons conducting initial design testing to five years beyond the next required periodic retest. In addition, we propose to provide a chart to clearly identify the current retention requirement for test reports.

§ 178.707

Section 178.707 specifies standards for composite IBCs. In this NPRM, PHMSA is proposing to amend this section to reference ASTM D4976–06 Standard Specification for Polyethylene Plastics Molding and Extrusion Materials to provide acceptable ranges in the specifications for the resin used in the production of IBCs.

§ 178.801

This section provides the general requirements for testing IBCs. In this NPRM, PHMSA is proposing to revise

paragraph (l) of section 178.801 to limit the document retention period for persons conducting initial design testing to five years beyond the next required periodic retest. In addition, we propose to provide a chart to clearly identify the current retention requirement for test reports.

§ 178.955

This section provides the general requirements for testing large packagings. In this NPRM, PHMSA is proposing to revise paragraph (i) of section 178.955 to limit the document retention period for persons conducting initial design testing to five years beyond the next required periodic retest. In addition, we propose to provide a chart to clearly identify the current retention requirement for test reports.

IV Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This NPRM is published under authority of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*). Section 5103(b) of Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. This rule proposes to amend the recordkeeping and package marking requirements for third-party labs and manufacturers to assure the traceability of packaging; clarify an acceptable range in specifications for resins used in the manufacture of plastic drums and IBC's; remove the listing for ''Gasohol, gasoline mixed with ethyl alcohol, with not more than 10% alcohol, NA1203''; harmonize internationally and provide a limited quantity exception for 4.1, Self-reactive solids and Self-reactive liquids, Types B through F; allow smokeless powder classified as a Division 1.4C material to be reclassified as a Division 4.1 material to relax the regulatory requirements for these materials without compromising safety; and provide greater flexibility by allowing the Dangerous Cargo Manifest to be in locations designated by the master of the vessel besides ''on or near the vessel's bridge'' while the vessel is in a United States port.

B. Executive Order 12866, Executive Order 13563 and DOT Regulatory Policies and Procedures

This NPRM is not considered a significant regulatory action under section 3(f) Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget (OMB). The proposed rule is not considered a significant rule under the Regulatory Policies and Procedures order issued by the U.S. Department of Transportation (44 FR 11034).

In this NPRM, we propose to amend miscellaneous provisions in the HMR to clarify the provisions and to relax overly burdensome requirements. PHMSA anticipates the proposals contained in this rule will have economic benefits to the regulated community. This NPRM is designed to increase the clarity of the HMR, thereby increasing voluntary compliance while reducing compliance costs.

Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 Regulatory Planning and Review of September 30, 1993. In addition, Executive Order 13563 specifically requires agencies to: (1) Involve the public in the regulatory process; (2) promote simplification and harmonization through interagency coordination; (3) identify and consider regulatory approaches that reduce burden and maintain flexibility; (4) ensure the objectivity of any scientific or technological information used to support regulatory action; consider how to best promote retrospective analysis to modify, streamline, expand, or repeal existing rules that are outmoded, ineffective, insufficient, or excessively burdensome.

In this NPRM, PHMSA has involved the public in the regulatory process in a variety of ways for this proposed rulemaking. Specifically, in this rulemaking PHMSA is responding to seven petitions that have been submitted by the public in accordance with the Administrative Procedure Act and PHMSA's rulemaking procedure regulations, in 49 CFR 106.95. Key issues covered by the petitions include requests from the public to revise the packaging requirements, clarify the HMR pertaining to alcohol and gasoline mixtures, and allow additional exceptions for the classification of smokeless powder used for small arms ammunition.

C. Executive Order 13132

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This proposed rule would preempt state, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The federal hazardous material transportation law, 49 U.S.C. 5125(b)(1), contains an express preemption provision (49 U.S.C. 5125(b)) preempting state, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, content, and placement of those documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container which is represented, marked, certified, or sold as qualified for use in the transport of hazardous materials.

This proposed rule concerns the classification, packaging, marking, labeling, and handling of hazardous materials, among other covered subjects. If adopted, this rule would preempt any state, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are ''substantively the same'' (see 49 CFR 107.202(d) as the Federal requirements.)

Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that if PHMSA issues a regulation concerning any of the covered subjects, PHMSA must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. PHMSA proposes the effective date of federal preemption be 90 days from publication of a final rule in this matter in the **Federal Register**.

D. Executive Order 13175

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rule does not have tribal implications and does not impose substantial direct compliance

costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines the rule is not expected to have a significant impact on a substantial number of small entities. This proposed rule would amend miscellaneous provisions in the HMR to clarify provisions based on petitions for rulemaking. While maintaining safety, it would relax certain requirements that are overly burdensome and provide clarity where requested by the regulated community The proposed changes are generally intended to provide relief to shippers, carriers, and packaging manufacturers, including small entities.

Consideration of alternative proposals for small businesses. The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so and still meet the objectives of applicable regulatory statutes. In the case of hazardous materials transportation, it is not possible to establish exceptions or differing standards and still accomplish our safety objectives.

The proposed changes are generally intended to provide relief to shippers, carriers, and packaging manufactures and testers, including small entities. Therefore, this proposed rule will not have a significant economic impact on a substantial number of small entities; however, it will provide economic relief to some small businesses. For example, limiting the document retention period for persons conducting initial design testing of packages to five years beyond the next required periodic retest, as proposed, should reduce the paperwork burden for some small businesses.

This proposed rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

This proposed rule does not impose any new information collection requirements. We anticipate a decrease in this information collection burden due to the elimination of the application process for a special permit and a reduction in document retention time if adopted in this rule.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141,300,000 or more to either state, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act, 42 U.S.C. 4321–4375, requires federal agencies to analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations require federal agencies to conduct an environmental review considering: (1) The need for the proposed action; (2) alternatives to the proposed action; (3) probable environmental impacts of the proposed action and alternatives; and (4) the agencies and persons consulted during the consideration process.

Description of Action

Docket No. PHMSA–2011–0142 (HM–219), NPRM

Transportation of hazardous materials in commerce is subject to requirements in the HMR, issued under authority of Federal hazardous materials transportation law, codified at 49 U.S.C. 5001 *et seq.* To facilitate the safe and efficient transportation of hazardous materials in international commerce, the HMR provide that both domestic and international shipments of hazardous materials may be offered for transportation and transported under provisions of the international regulations.

Proposed Amendments to the HMR:

In this NPRM, PHMSA is proposing to:

- Revise § 178.3 to indicate that a manufacturer or third-party laboratory mark may not be used when continued certification of a packaging is conducted by someone other than the original manufacturer or third-party testing laboratory, unless specifically authorized by the original manufacturer or third-party testing laboratory;
- Revise §§ 178.601(l), 178.801(l) and 178.955(i) to require that the test report must be maintained at each location where the packaging is manufactured and each location where the design qualification tests are conducted for the duration of the certification plus five years beyond the last certification, instead of the current requirement of until the package in no longer made;
- Revise the HMT by removing the listing for ''Gasohol, gasoline mixed with ethyl alcohol, with not more than 10% alcohol, NA1203,'' and remove reference to gasohol in § 172.336(c)(4) and 172.336(c)(5);
- Revise § 172.101 to refer to § 173.151 to provide the limited quantity exception for Division 4.1, Self-reactive solids and Self-reactive liquids, Types B through F, consistent with international regulations;
- Allow smokeless powder classified as a Division 1.4C material to be reclassified as a Division 4.1 material to relax the regulatory requirements for these materials without compromising safety;
- Add a reference in 49 CFR 178.509(b)(1) and 178.707(c)(3) to ASTM D4976–06 Standard Specification for Polyethylene Plastics Molding and Extrusion Materials to provide a range of acceptable thicknesses in the IBC material; and
- Allow the DCM to be in locations designated by the master of the vessel besides ''on or near the vessel's bridge'' while the vessel is docked in a U.S. port to ensure that the DCM is readily available to communicate the presence and nature of the hazardous materials on board a vessel. This revision would provide greater flexibility by allowing the document to be maintained in either the vessel's cargo office or another location designated by the master of the vessel.

Alternatives Considered:

Alternative (1): Do nothing.

Our goal is to update, clarify and provide relief from certain existing regulatory requirements to promote safer transportation practices, eliminate unnecessary regulatory requirements, finalize outstanding petitions for rulemaking, and facilitate international commerce. We rejected the do-nothing alternative.

Alternative (2): Go forward with the proposed amendments to the HMR in this NPRM.

This is the selected alternative.

Environmental Consequences

Hazardous materials are substances that may pose a threat to public safety or the environment during transportation because of their physical, chemical, or nuclear properties. The hazardous material regulatory system is a risk management system that is prevention oriented and focused on identifying a safety hazard and reducing the probability and quantity of a hazardous material release. Hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. The regulations require each shipper to classify a material in accordance with these hazard classes and packing groups; the process of classifying a hazardous material is itself a form of hazard analysis. Further, the regulations require the shipper to communicate the material's hazards through use of the hazard class, packing group, and proper shipping name on the shipping paper and the use of labels on packages and placards on transport vehicles. Thus, the shipping paper, labels, and placards communicate the most significant findings of the shipper's hazard analysis. A hazardous material is assigned to one of three packing groups based upon its degree of hazard, from a high hazard, Packing Group I to a low hazard, Packing Group III. The quality, damage resistance, and performance standards of the packaging in each packing group are appropriate for the hazards of the material transported.

Under the HMR, hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en route incidents resulting from cargo shifts, valve failures, package failures, loading, unloading, collisions, handling problems, or deliberate sabotage. The release of hazardous materials can cause the loss of ecological resources (e.g. wildlife habitats) and the contamination of air, aquatic environments, and soil. Contamination of soil can lead to the contamination of ground water. For the most part, the adverse environmental impacts associated with releases of most hazardous materials are short term impacts that can be reduced or eliminated through prompt clean up and decontamination of the accident scene.

The proposed packaging changes would establish greater accountability for certifying packages, reduce paperwork for the affected package testing agencies, and potentially reduce package failures that result in hazardous materials incidents. The amendments that harmonize the HMR with international standards and recommendations are intended to enhance the safety of international hazardous materials transportation through an increased level of industry compliance, the smooth flow of hazardous materials from their points of origin to their points of destination, and effective emergency response in the event of a hazardous materials incident. The proposed revision regarding where the DCM is keep when a vessel is in a U.S. port should help to expedite a response to an emergency and reduce the environmental impact to a hazardous materials spill.

Conclusion

PHMSA proposes to make miscellaneous amendments to the HMR in response to petitions for rulemaking. The proposed amendments are intended to update, clarify, or provide relief from certain existing regulatory requirements to promote safer transportation practices; eliminate unnecessary regulatory requirements; finalize outstanding petitions for rulemaking; facilitate international commerce; and, in general, make the requirements easier to understand and follow. While the net environmental impact of this rule will be positive, we believe there will be no significant environmental impacts associated with this proposed rule. We welcome comment on this preliminary analysis.

List of Agencies Consulted

U.S. Coast Guard
U.S. Department of Agriculture (USDA)
U.S. Department of Energy
U.S. Department of Interior
U.S. Department of Justice
U.S. Environmental Protection Agency

J. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, 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) or you may visit *http://www.regulations.gov.*

K. Executive Order 13609 International Trade Analysis

Under E.O. 13609, agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, 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 any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude 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.

PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of the proposed rule to ensure that it does not cause unnecessary obstacles to foreign trade. In this NPRM, PHMSA is proposing to revise the HMR to align with international standards by: Removing reference to ''gasohol''; providing a limited quantity exception for 4.1, Self-reactive solids and Self-reactive liquids, Types B through F; and allowing smokeless powder classified as a Division 1.4C material to be reclassified as a Division 4.1 material. These amendments are intended to enhance the safety of international hazardous materials transportation through an increased level of industry compliance, ensure the smooth flow of hazardous materials from their points of origin to their points of destination, and facilitate effective emergency response in the event of a hazardous materials incident. Accordingly, this rulemaking is consistent with E.O. 13609 and PHMSA's obligations under the Trade Agreement Act, as amended.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements, Definitions and abbreviations.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Training, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, we are proposing to amend 49 CFR Chapter I as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134, section 31001.

1. In § 171.7, the paragraph (a)(3) table is amended as follows:

Under the entry ''The American Society for Testing and Materials,'' the entry ''ASTM D4976–06, Standard Specification for Polyethylene Plastics Molding and Extrusion Materials'' is added in appropriate numerical order.

§ 171.7 Reference Material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * * * *	
American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohoken, PA 19428, telephone 610–832–9585, *http://www.astm.org:*	
* * * * * * *	
ASTM D4976–06 Standard Specification for Polyethylene Plastics Molding and Extrusion Materials, published December, 2006.	178.601(c)(4), 178.801(c)(7).
* * * * * * *	

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 1.53.

2. In § 172.101, The Hazardous Materials Table is amended by removing and revising entries, in the appropriate alphabetical sequence as follows.

* * * * *

§ 172.101 Hazardous Materials Table.

BILLING CODE 4910–60–P

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Numbers	PG	Label Codes	Special Provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*		*		*		*		*
	[REVISE]												
	Alcohols, n.o.s.	3	UN1987	I	3	T11, TP1, TP8, TP27	4b	201	243	1L	30L	E	
				II	3	IB2, T7, TP1, TP8, TP28	4b, 150	202	242	5L	60L	B	
				III	3	B1, IB3, T4, TP1, TP29	4b, 150	203	242	60L	220L	A	
	*		*		*		*		*		*		*
	Gasoline *includes gasoline mixed with ethyl alcohol, with not more than 10% alcohol.*	3	UN1203	II	3	144, 177, B1, B33, IB2, T8	150	202	242	5L	60L	E	
	*		*		*		*		*		*		*
	Powder, smokeless	1.4C	UN0509	II	1.4C			62	None	Forbidden	Forbidden	06	
	*		*		*		*		*		*		*
G	Self-reactive liquid type B	4.1	UN3221	II	4.1	53	151	224	None	Forbidden	Forbidden	D	52, 53
	*		*		*		*		*		*		*
G	Self-reactive liquid type C	4.1	UN3223	II	4.1		151	224	None	5 L	10 L	D	52, 53
	*		*		*		*		*		*		*
G	Self-reactive liquid type D	4.1	UN3225	II	4.1		151	224	None	5 L	10 L	D	52, 53
	*		*		*		*		*		*		*
G	Self-reactive liquid type E	4.1	UN3227	II	4.1		151	224	None	10 L	25 L	D	52, 53
	*		*		*		*		*		*		*
G	Self-reactive liquid type F	4.1	UN3229	II	4.1		151	224	None	10 L	25 L	D	52, 53
	*		*		*		*		*		*		*
G	Self-reactive solid type B	4.1	UN3222	II	4.1	53	151	224	None	Forbidden	Forbidden	D	52, 53
	*		*		*		*		*		*		*

G	Self-reactive solid type C	4.1	UN3224	II	4.1		151	224	None	5 kg	10 kg	D	52, 53
	*		*		*		*		*		*		*
G	Self-reactive solid type D	4.1	UN3226	II	4.1		151	224	None	5 kg	10 kg	D	52, 53
	*		*		*		*		*		*		*
G	Self-reactive solid type E	4.1	UN3226	II	4.1		151	224	None	5 kg	10 kg	D	52, 53
	*		*		*		*		*		*		*
G	Self-reactive solid type F	4.1	UN3230	II	4.1		151	224	None	10 kg	25 kg	D	52, 53
	*		*		*		*		*		*		*
	[REMOVE]												
	*		*		*		*		*		*		*
	Gasohol *gasoline mixed with ethyl alcohol, with not more than 10% alcohol*	3	NA1203	II	3	144, 177	150	202	242	5 L	60 L	E	…….
	*		*		*		*		*		*		*

BILLING CODE 4910–60–C

* * * * *

Authority: 49 U.S.C. 5101–5128, 44701; 49 1.53.

3. In § 172.102, Special provision 16 is revised to read, as follows:

* * * * *

16 This description applies to smokeless powder and other solid propellants that are used as powder for small arms and have been classed as Division 1.3, 1.4 and 4.1 in accordance with § 173.56 of this subchapter.

* * * * *

4. In § 172.336, paragraphs (c)(4),(5), and (6) are revised, as follows:

§ 172.336 Identification numbers.

* * * * *

(c) Identification Numbers are not required on:

Packaging—	When—	Then the Alternative Marking Requirement is—
On the ends of portable tanks, cargo tanks, or tank cars.	They have more than one compartment and hazardous materials with different identification numbers are being transported therein.	The identification numbers on the sides of the tank are displayed in the same sequence as the compartments containing the materials they identify.
On cargo tanks	They contain only gasoline	The tank is marked ''Gasoline'' on each side and rear in letters no less than 50 mm (2 inches) high, or is placarded in accordance with § 172.542(c).
On cargo tanks	They contain only fuel oil	The cargo tank is marked ''Fuel Oil'' on each side and rear in letters no less than 50 mm (2 inches) high, or is placarded in accordance with § 172.544(c).
On cargo tanks	They contain different petroleum distillate fuels.	The identification number for the liquid petroleum distillate fuel having the lowest flash point is displayed; the cargo tank that contains such petroleum distillate fuels together with gasoline and alcohol fuel blends consisting of more than ten percent ethanol and the identification number ''3475'' is also displayed.
On compartmented cargo tanks or tank cars.	They contain different petroleum distillate fuels.	The identification number for the liquid petroleum distillate having the lowest flash point is displayed. If the compartmented cargo tank or tank car also contains a gasoline and alcohol fuel blends consisting of more than 10% ethanol the identification number ''3475'' or ''1987'' must also displayed.
On nurse tanks	They meet the provisions of § 173.315(m) of this subchapter.	N/A

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

Authority: 49 U.S.C. 5101–5128, 44701; 49 1.53.

5. Section 173.171 is amended to include a new subparagraph (d) and to move current subparagraph (d) to subparagraph (e) to read as follows:

§ 173.171 Smokeless powder for small arms.

Smokeless powder for small arms which has been classed in Division 1.3 or Division 1.4 may be reclassed in Division 4.1, for domestic transportation by motor vehicle, rail car, vessel, or cargo-only aircraft, subject to the following conditions:

(a) The powder must be examined and approved for a Division 1.3 or Division 1.4 and Division 4.1 classification in accordance with §§ 173.56 and 173.58 of this part.

(b)The total quantity of smokeless powder may not exceed 45.4 kg (100 pounds) net mass in:

(1) One rail car, motor vehicle, or cargo-only aircraft; or

(2) One freight container on a vessel, not to exceed four freight containers per vessel.

(c) For Division 1.3: only combination packagings with inner packagings not exceeding 3.6 kg (8 pounds) net mass are authorized. Inner packagings must be arranged and protected so as to prevent simultaneous ignition of the contents. The complete package must be of the same type that has been examined as required in § 173.56 of this part.

(d) For Division 1.4: only combination packagings with inner packagings not exceeding the net mass that have been examined and approved as required in § 173.56 of this part are authorized. Inner packagings must be arranged and protected so as to prevent simultaneous ignition of the contents. The complete package must be of the same type that has been examined as required in § 173.56 of this part.

(e) Inside packages that have been examined and approved by the Associate Administrator may be packaged in UN 4G fiberboard boxes meeting the Packing Group I performance level, provided all inside containers are packed to prevent shifting and the net weight of smokeless powder in any one box does not exceed 7.3 kg (16 pounds).

* * * * *

PART 176—CARRIAGE BY VESSEL

Authority: 49 U.S.C. 5101–5128, 44701; 49 1.53.

6. In § 176.30, paragraph (a) is revised to read as follows:

§ 176.30 Dangerous cargo manifest.

(a) The carrier, its agents, and any person designated for this purpose by the carrier or agents must prepare a dangerous cargo manifest, list, or stowage plan. This document may not include a material that is not subject to the requirements of the HMR or the IMDG Code (IBR, see § 171.7 of this subchapter). This document must be kept on or near the vessel's bridge, except when the vessel is docked in a United States port. When the vessel is docked in a United States port, this document may be kept in the vessel's cargo office or another location designated by the master of the vessel provided that a sign is placed beside the designated holder on or near the vessel's bridge indicating the location of the dangerous cargo manifest, list, or stowage plan. This document must always be in a location that is readily accessible to emergency response and enforcement personnel. It must contain the following information:

* * * * *

Section 178 Specifications for Packagings

Authority: 49 U.S.C. 5101–5128, 44701; 49 1.53.

7. In § 178.3, paragraph (a)(2) is revised to read as follows:

§ 178.3 Marking of packaging.

(a) * * *

(2) Unless otherwise specified in this part, the name and address or symbol of the packaging manufacturer or the person certifying compliance with a UN standard. Symbols, if used, must be registered with the Associate Administrator. Symbols must represent either the packaging manufacturer or the approval agency responsible for providing the most recent certification for the packaging through design certification testing or periodic retesting, as applicable. Duplicative symbols are not authorized.

* * * * *

8. In § 178.509, paragraph (b)(1) is revised to read as follows:

§ 178.509 Standards for plastic drums and jerricans.

* * * * *

(b) * * *

(1) The packaging must be manufactured from suitable plastic material and be of adequate strength in relation to its capacity and intended use. The specification of the plastic material may not fall outside the parameters established by ASTM D4976–06 (IBR, see § 171.7 of this subchapter). No used material other than production residues or regrind from the same manufacturing process may be used unless approved by the Associate Administrator. The packaging must be adequately resistant to aging and to degradation caused either by the substance contained or by ultra-violet radiation. Any permeation of the substance contained may not constitute a danger under normal conditions of transport.

* * * * *

9. In § 178.601, paragraph (l) is revised to read as follows:

§ 178.601 General requirements.

* * * * *

(l) *Record retention.* Following each design qualification test and each periodic retest on a packaging, a test report must be prepared. The test report must be maintained as follows:

The test report must be maintained at each location where the packaging is manufactured, certified, and a design qualification test or periodic retest is conducted. The test report must be maintained as follows:

Responsible party	Duration
Person manufacturing the packaging	As long as manufactured and two years thereafter.
Person performing design testing	Until next periodic retest and five years thereafter.
Person performing periodic retesting	Until next periodic retest.

The test report must be made available to a user of a packaging or a representative of the Department upon request. The test report, at a minimum, must contain the following information:

* * *

* * * * *

10. In § 178.707, paragraph (c)(3) is revised to read as follows:

§ 178.707 Standards for composite IBCs.

* * * * *

(c) * * *

(3) The inner receptacle must be manufactured from plastic material of known specifications and be of a strength relative to its capacity and to the service it is required to perform use. The specification of the plastic material may not fall outside the parameters established by ASTM D4976–06 (IBR, see § 171.7 of this subchapter). In addition to conformance with the requirements of § 173.24 of this subchapter, the material must be resistant to aging and to degradation caused by ultraviolet radiation. The inner receptacle of 31HZ2 composite IBCs must consist of at least three plies of film.

* * * * *

11. In § 178.801, paragraph (l) is revised to read as follows:

§ 178.801 General Requirements.

* * * * *

(l) *Record retention.* (1) The person who certifies an IBC design type must keep records of design qualification tests for each IBC design type and for each periodic design requalification as specified in this part. These records must be maintained at each location where the IBC is manufactured and at each location where design qualification and periodic design requalification testing is performed. The test report must be maintained as follows:

Responsible party	Duration
Person manufacturing the packaging	As long as manufactured and two years thereafter.
Person performing design testing	Until next periodic retest and five years thereafter.
Person performing periodic retesting	Until next periodic retest.

These records must include the following information: Name and address of test facility; name and address of the person certifying the IBC; a unique test report identification; date of test report; manufacturer of the IBC; description of the IBC design type (e.g., dimensions, materials, closures, thickness, representative service equipment, etc.); maximum IBC capacity; characteristics of test contents; test descriptions and results (including drop heights, hydrostatic pressures, tear propagation length, etc.). Each test report must be signed with the name of the person conducting the test, and name of the person responsible for testing.

* * * * *

12. In § 178.955, paragraph (i) is revised to read as follows:

§ 178.955 General Requirements.

* * * * *

(i) *Record retention.* Following each design qualification test and each periodic retest on a Large Packaging, a test report must be prepared. The test report must be maintained at each location where the Large Packaging is manufactured and each location where the design qualification tests are conducted. The test report must be maintained as follows:

Responsible party	Duration
Person manufacturing the packaging	As long as manufactured and two years thereafter.
Person performing design testing	Until next periodic retest and five years thereafter.
Person performing periodic retesting	Until next periodic retest.

The test report must be made available to a user of a Large Packaging or a representative of the Department of Transportation upon request. The test report, at a minimum, must contain the following information: * * *

* * * * *

Issued in Washington, DC, on May 18, 2012 under authority delegated in 49 CFR Part 106.

William Schoonover,

Deputy Associate Administrator, Field Operations, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2012–12471 Filed 5–23–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2011–0074; 4500030114]

RIN 1018–AX76

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Cumberland Darter, Rush Darter, Yellowcheek Darter, Chucky Madtom, and Laurel Dace

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and announcement of public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period on our October 12, 2011, proposed designation of critical habitat for the Cumberland darter *(Etheostoma susanae),* rush darter *(Etheostoma phytophilum),* yellowcheek darter *(Etheostoma moorei),* chucky madtom *(Noturus crypticus),* and laurel dace *(Chrosomus saylori)* under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for these five fishes and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the revised proposed rule, the associated DEA, and the amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule. We will also hold a public hearing (see **DATES** and **ADDRESSES**).

DATES: *Comment submission:* We will consider all comments received or postmarked on or before June 25, 2012.

Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES,** below) must be received by 11:59 p.m. Eastern Time on the closing date.

Public hearing: We will hold a public hearing from 7:00 p.m. to 9:00 p.m., on June 7, 2012, in Clinton, Arkansas.

ADDRESSES: *Document availability:* You may obtain copies of the proposed rule and the draft economic analysis on the Internet at *http://www.regulations.gov* at Docket Number FWS–R4–ES–2011–0074, or by mail from the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Comment submission: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for Docket No. FWS–R4–ES–2011–0074, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2011–0074; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

Public hearing: The public hearing will be held at the Clinton High School Auditorium, 115 Joe Bowling Road, Clinton, Arkansas 72031. People needing reasonable accommodations in order to attend and participate in the public hearing should contact Jim Boggs, Arkansas Ecological Services Field Office, at 501–513–4470 no later than 1 week before the hearing date (see **DATES**) to allow sufficient time to accommodate requests.

FOR FURTHER INFORMATION CONTACT: Mary Jennings, Field Supervisor, U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office, 446 Neal Street, Cookeville, TN 38501; by telephone 931–525–4973; or by facsimile 931–528–7075. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Changes From the Proposed Rule

We are making the following changes to the proposed rule of October 12, 2011 (76 FR 63360). A change in mapping methodology resulted in a revision to the total number of river kilometers (km) for the proposed designation of yellowcheek darter critical habitat. The beginning and ending points of critical habitat, as well as the unit descriptions (as described in the proposed critical habitat rule) will remain the same. The change in mapping results from an oversight in methods used for estimating the unit lengths in the other units proposed for designation as critical habitat. This methodology uses a better technique for following the curve and meander of the river channel and results in an additional 6.6 river kilometers (rkm) (4.1 river miles (rm)) for the yellowcheek darter. In addition, a revision to the ownership of one property resulted in a change of the total number of river kilometers (miles) in private ownership, from 148 rkm (92 rm) to 162.7 rkm (101.1 rm), as well as a corresponding downward revision to other ownership types.

The following table shows the revised totals. The data in this table replaces the data provided in table 3 of the proposed rule at 76 FR 63385 (October 12, 2011).

Unit	Location	Occupied	Private ownership km (mi)	State, county, city ownership km (mi)	Total length km (mi)
1	Middle Fork Little Red River	Yes	73.2 (45.5)	0	73.2 (45.5)
2	South Fork Little Red River	Yes	33.3 (20.7)	0.5 (0.3)	33.8 (21.0)
3	Archey Fork Little Red River	Yes	28.2 (17.5)	0.3 (0.2)	28.5 (17.7)
4	Devil's Fork Little Red River	Yes	28.0 (17.4)	0	28.0 (17.4)
Total			162.7 (101.1)	0.8 (0.5)	163.5 (101.6)

Public Comments

We will accept written comments and information during this reopened comment period on our proposed designation of critical habitat for the Cumberland darter *(Etheostoma susanae),* rush darter *(Etheostoma phytophilum),* yellowcheek darter *(Etheostoma moorei),* chucky madtom *(Noturus crypticus),* and laurel dace *(Chrosomus saylori)* that was published in the **Federal Register** on October 12, 2011 (76 FR 63360), our draft economic analysis (DEA) of the proposed designation, and the amended required determinations provided in this document. Verbal testimony or written comments may also be presented during the public hearing. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The amount and distribution of each species' habitat;

(b) What areas occupied by the species at the time of listing that contain features essential for the conservation of the species we should include in the designation and why; and

(c) What areas not occupied at the time of listing are essential to the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(5) The projected and reasonably likely impacts of climate change on the critical habitat we are proposing.

(6) Whether our approach to designating critical habitat could be improved or modified in any way to

provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

(7) Information on the extent to which the description of economic impacts in the DEA is complete and accurate.

(8) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

If you submitted comments or information on the proposed rule (76 FR 63360) during the initial comment period from October 12, 2011, to December 12, 2011, please do not resubmit them. We have incorporated them into the public record as part of the original comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning revised critical habitat will take into consideration all written comments and any additional information we receive during both comment periods, including public testimony from the public hearing mentioned above. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R4–ES–2011–0074, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for the Cumberland darter, rush darter, yellowcheek darter, chucky madtom, and laurel dace in this document. For more information on previous Federal actions concerning the five fishes, refer to the proposed designation of critical habitat published in the **Federal Register** on October 12, 2011 (76 FR 63360). For more information on the five fishes or their habitats, refer to the final listing rule published in the **Federal Register** on August 9, 2011 (FR 48722), which is available online at *http://www.regulations.gov* (at Docket Number FWS–R4–ES–2011–0027) or from the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On October 12, 2011, we published a proposed rule to designate critical habitat for these five fishes (76 FR 63360). We proposed to designate approximately 85 river kilometers (rkm) (53 river miles (rmi)) of critical habitat for the Cumberland darter in McCreary and Whitley Counties, Kentucky, and Campbell and Scott Counties, Tennessee; 42 rkm (27 rmi) and 19 hectares (ha) (22 acres (ac)) of critical habitat for the rush darter in Etowah, Jefferson, and Winston Counties, Alabama; 157 rkm (98 rmi) of critical habitat for the yellowcheek darter in Cleburne, Searcy, Stone, and Van Buren Counties, Arkansas; 32 rkm (20 rmi) of critical habitat for the chucky madtom in Greene County, Tennessee; and 42 rkm (26 rmi) of critical habitat for the laurel dace in Bledsoe, Rhea, and Sequatchie Counties, Tennessee. That proposal had a 60-day comment period, ending December 12, 2011. We will submit for publication in the **Federal Register** a final critical habitat designation for these five fishes on or before October 12, 2012.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of these five fishes, the benefits of critical habitat include public awareness of the presence of the fishes and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for the five fishes due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies.

We have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the

comment period and information about the economic impact of designation. Accordingly, our DEA concerning the proposed critical habitat designation is available for review and comment (see **ADDRESSES**).

Draft Economic Analysis

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the Cumberland darter, rush darter, yellowcheek darter, chucky madtom, and laurel dace. The DEA separates conservation measures into two distinct categories according to ''without critical habitat'' and ''with critical habitat'' scenarios. The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections otherwise afforded to the five fishes (e.g., under the Federal listing and other Federal, State, and local regulations). The ''with critical habitat'' scenario describes the incremental impacts specifically due to designation of critical habitat for these species. In other words, these incremental conservation measures and associated economic impacts would not occur but for the designation. Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the DEA, but economic impacts associated with these measures are not quantified. Economic impacts are only quantified for conservation measures implemented specifically due to the designation of critical habitat (i.e., incremental impacts). For a further description of the methodology of the analysis, see Chapter 2, ''Framework for the analysis,'' of the DEA.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the five fishes over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 20-year timeframe. It identifies potential incremental costs as a result of the proposed critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing. The DEA quantifies economic impacts of the five fishes conservation efforts associated with the following categories of activity: (1) Coal mining; (2) oil and natural gas development; (3) agriculture, ranching, and silviculture; (4) recreational uses; (5) dredging, channelization, impoundments, dams, and diversions; (6) transportation; and (7) residential and commercial development.

The DEA concluded that the types of conservation efforts requested by the Service during section 7 consultation regarding the five fishes were not expected to change due to critical habitat designations. The Service believes that results of consultation under the adverse modification and jeopardy standards are likely to be similar because (1) the primary constituent elements that define critical habitat are also essential for the survival of the five fishes, (2) the five fishes are limited or severely limited in the respective ranges, and (3) numbers of individuals in the surviving populations are small or very small. In addition, although two of the proposed critical habitat units for the Cumberland darter are unoccupied, incremental impacts of the critical habitat designations will be limited for the following reasons: (1) Both units are currently occupied by the federally threatened blackside dace, *Chrosomus cumberlandensis;* (2) both units are situated at least partially within the Daniel Boone National Forest, which is managed according to a land and resource management plan that includes specific measures to protect sensitive species; and (3) both units are located within the same hydrologic unit as other occupied critical habitat units.

The DEA concludes that incremental impacts of critical habitat designation are limited to additional administrative costs of consultations and that indirect incremental impacts are unlikely to result from the designation of critical habitat for the five fishes. The present value of the total direct (administrative) incremental cost of critical habitat designation is $644,000 over the next 20 years assuming a seven percent discount rate, or $56,800 on an annualized basis. Water quality management activities are likely to be subject to the greatest incremental impacts at $273,000 over the next 20 years, followed by transportation at $161,000; coal mining at $79,000; oil and natural gas development at $73,700; agriculture, ranching, and silviculture at $36,100; dredging, channelization, impoundments, dams, and diversions at $10,700; and recreation at $10,000.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Required Determinations—Amended

In our October 12, 2011, proposed rule (76 FR 63360), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). However, based on the DEA data, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic

impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rule.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the five fishes would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as coal mining; oil and natural gas development; dredging, channelization, impoundments, dams, and diversions; and transportation. In order to determine whether it is appropriate for our agency to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the five fishes are present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the five fishes. We anticipate that ten small entities could be affected by coal mining in a single year at a cost of $875 each, representing less than three percent of annual revenues. Two small entities could be affected by oil and natural gas development within a single year at a cost of $875 each, representing less than three percent of annual revenues. One small entity could be affected by dredging, channelization, impoundments, dams, and diversions within a single year, at a cost of $2,630, representing less than one percent of annual revenues. One small entity could be affected by transportation within a single year, at a cost of $1,750, representing less than one percent of annual revenues. Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. We have identified 14 small entities that may be impacted by the proposed critical habitat designation. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Authors

The primary authors of this notice are the staff members of the Tennessee Ecological Services Field Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 17, 2012.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–12572 Filed 5–23–12; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 77, No. 101
Thursday, May 24, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0012]

Secretary's Advisory Committee on Animal Health; Notice of Solicitation for Membership

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of solicitation for membership.

SUMMARY: We are giving notice that the Secretary is soliciting nominations for membership for this Committee to serve for 2- to 3-year staggered terms.

DATES: Consideration will be given to nominations received on or before July 9, 2012.

ADDRESSES: Completed nomination forms should be sent to the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Mrs. R.J. Cabrera, Writing, Editing, and Regulatory Coordination, VS, APHIS, 4700 River Road Unit 35, Riverdale, MD 20737–1231; (301) 851–3478, email: *rj.cabrera@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The Secretary's Advisory Committee on Animal Health (SACAH or the Committee) advises the Secretary of Agriculture on strategies, policies, and programs to prevent, control, or eradicate animal diseases. The Committee considers agricultural initiatives of national scope and significance and advises on matters of public health, conservation of national resources, stability of livestock economies, livestock disease management and traceability strategies, prioritizing animal health imperatives, and other related aspects of agriculture.

The Committee Chairperson and Vice Chairperson are elected by the Committee from among its members.

Terms will expire for the current members of the Committee in August 2012. We are soliciting nominations from interested organizations and individuals. An organization may nominate individuals from within or outside its membership. Nomination forms are available on the Internet at *http://www.ocio.usda.gov/forms/doc/AD-755.pdf* or may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary will select members to obtain the broadest possible representation on the Committee, in accordance with the Federal Advisory Committee Act (5 U.S.C. App.2) and U.S. Department of Agriculture (USDA) Regulation 1041–1. Equal opportunity practices, in line with the USDA policies, will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Done in Washington, DC, this 18th day of May 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–12686 Filed 5–23–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2012–0029]

Codex Alimentarius Commission: Meeting of the Codex Alimentarius Commission

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), is sponsoring a public meeting on June 5, 2012. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions that will be discussed at the 35th Session of the Codex Alimentarius Commission (CAC), which will be held in Rome, Italy, July 2–7, 2012. The Under Secretary for Food Safety recognizes the importance of providing interested parties the opportunity to obtain background information on the 35th Session of the CAC and to address items on the agenda.

DATES: The public meeting is scheduled for Tuesday, June 5, 2012, from 1:00–4:00 p.m.

ADDRESSES: The public meeting will be held at The Jamie L. Whitten Building, USDA, 1400 Independence Avenue SW., Room 107–A, Washington, DC 20250. Documents related to the 35th Session of the CAC will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.org/meetings-reports/en/.*

The U.S. Delegate to the 35th Session of the CAC invites U.S. interested parties to submit their comments electronically to the following email address: *Barbara.McNiff@fsis.usda.gov.*

Call-In Number

If you wish to participate in the public meeting for the 35th Session of the CAC, by conference call, please use the call-in number and participant code listed below:

Call in Number: 1–888–858–2144.

Participant Code: 6208658.

For Further Information About the 35th Session of the CAC Contact: Barbara McNiff, U.S. Codex Office, 1400 Independence Avenue SW., Room 4861, Washington, DC, 20250, Telephone: (202) 690–4719, Fax: (202) 720–3157, Email: *Barbara.Mcniff@fsis.usda.gov.*

For Further Information About the Public Meeting Contact: Jasmine Curtis, U.S. Codex Office, 1400 Independence Avenue SW., Room 4865, Washington, DC 20250, Telephone: (202) 690–1124, Fax: (202) 720–3157, Email: *Jasmine.Curtis@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex

seeks to protect the health of consumers and ensure fair practices in the food trade; promotes coordination of all food standards work undertaken by international governmental and non governmental organizations; determines priorities and initiates and guides the preparation of draft standards through and with the aid of appropriate organizations; finalizes standards elaborated and publish them in a Codex Alimentarius either as regional or worldwide standards, together with international standards already finalized by other bodies, wherever this is practicable; amends published standards, as appropriate, in the light of new developments.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 35th Session of the CAC will be discussed during the public meeting:

- Proposed Amendments to the Procedural Manual
- Comments on Proposed Amendments to the Procedural Manual
- Draft Standards and Related Texts at Step 8 of the Procedure (including those Submitted at Step 5 with a Recommendation to Omit Steps 6 and 7 and at Step 5 of the Accelerated Procedure)
- Proposed Draft Standards and Related Texts at Step 5
- Revocation of Existing Codex Standards and Related Texts
- Amendments to the Codex Standards and Related Texts
- Proposals for the Elaboration of New Standards and Related Texts and for the Discontinuation of Work
- Matters Referred to the Commission by Codex Committees and Task Forces
- Strategic Planning of the Codex Alimentarius Commission

(a) General Implementation Status

(b) Draft Codex Strategic Plan 2014–2019

- Matters Arising from FAO and WHO

(a) FAO/WHO Project and Trust Fund for Enhanced Participation in Codex

(b) Other Matters Arising from FAO and WHO

- Financial and Budgetary Matters
- Relations between the Codex Alimentarius Commission and other International Organizations
- Election of Chairperson and Vice Chairperson
- Designation of Countries Responsible for Appointing the Chairpersons of Codex Committees and Task Forces
- Other Business

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access copies of these documents (see **ADDRESSES**).

Public Meeting

At the June 5, 2012, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 35th Session of the CAC (see **ADDRESSES**). Written comments should state that they relate to activities of the 35th session of the CAC.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

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Done at Washington, DC on: May 21, 2012.

Paulo Almeida,

U.S. Codex Alimentarius Office.

[FR Doc. 2012–12602 Filed 5–23–12; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Scientific Research, Exempted Fishing, and Exempted Educational Activity Submissions.

OMB Control Number: 0648–0309.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 129.

Average Hours per Response: Scientific research plans, 37 hours; scientific research reports, 3 hours; exempted fishing permit (EP) requests, 37 hours; EFP reports, 15 hours; exempted educational requests, 4 hours; reports, 2 hours.

Burden Hours: 6,073.

Needs and Uses: This request is for extension of a current information collection.

Fishery regulations do not generally affect scientific research activities conducted by a scientific research vessel. Persons planning to conduct such research are encouraged to submit a scientific research plan to ensure that the activities are considered research and not fishing. The researchers are requested to submit reports of their scientific research activity after its completion. The National Marine Fisheries Service (NMFS) may also grant exemptions from fishery regulations for educational or other activities (e.g., using non-regulation gear). The applications for these exemptions must be submitted, as well as reports on activities.

Affected Public: Business or other for-profit organizations, not-for-profit institutions.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: May 18, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–12586 Filed 5–23–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Reporting Requirements for Commercial Fisheries Authorization Under Section 118 of the Marine Mammal Protection Act

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

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 July 23, 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 Kristy Long, (301) 427–8402 or *Kristy.Long@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved information collection.

Reporting injury to and/or mortalities of marine mammals is mandated under Section 118 of the Marine Mammal Protection Act. This information is required to determine the impacts of commercial fishing on marine mammal populations. This information is also used to categorize commercial fisheries into Categories I, II, or III. Participants in the first two categories must be authorized to take marine mammals, while those in Category III are exempt from that requirement. All categories must report injuries or mortalities on a National Marine Fisheries Service form.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include email of electronic forms, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0292.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Non-profit institutions; State, local, or tribal government; business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 50.

Estimated Total Annual Cost to Public: $0 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: May 18, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–12585 Filed 5–23–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC034

Permits; Foreign Fishing

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

ACTION: Notice; request for comments.

SUMMARY: NMFS publishes for public review and comment information regarding a permit application for transshipment of Atlantic herring by Canadian vessels, submitted under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received by June 7, 2012.

ADDRESSES: Written comments on this action, identified by RIN 0648–XC034, should be sent to MiAe Kim in the NMFS Office of International Affairs at 1315 East-West Highway, Silver Spring, MD 20910 (phone: (301) 427–8365, fax: (301) 713–2313, email: *mi.ae.kim@noaa.gov*).

FOR FURTHER INFORMATION CONTACT: MiAe Kim at (301) 427–8365 or by email at *mi.ae.kim@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 204(d) of the Magnuson-Stevens Act (16 U.S.C. 1824(d)) authorizes the Secretary of Commerce (Secretary) to issue a transshipment permit authorizing a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the United States Exclusive Economic Zone (EEZ) or, with the concurrence of a state, within the boundaries of that state, to a point outside the United States. In addition, Public Law 104–297, section 105(e) directs the Secretary to issue section 204(d) permits for up to 14 Canadian

transport vessels to receive Atlantic herring harvested by United States fishermen and to be used in sardine processing. Transshipment must occur from within the boundaries of the State of Maine or within the portion of the EEZ east of the line 69 degrees 30 minutes west and within 12 nautical miles from Maine's seaward boundary.

Section 204(d)(3)(D) of the Magnuson-Stevens Act provides that an application may not be approved until the Secretary determines that ''no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated * * * an interest in performing the transportation at fair and reasonable rates.'' NMFS is publishing this notice as part of its effort to make such a determination with respect to the application described below.

Summary of Application

NMFS received an application requesting authorization for five Canadian transport vessels to receive transfers of herring from United States purse seine vessels, stop seines, and weirs for the purpose of transporting the herring to Canada for processing. The transshipment operations will occur within the boundaries of the State of Maine or within the portion of the EEZ east of the line 69°30′ W longitude and within 12 nautical miles from Maine's seaward boundary.

Dated: May 18, 2012.

Rebecca Lent,

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. 2012–12682 Filed 5–23–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC023

Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Navy's Research, Development, Test and Evaluation Activities at the NAVSEA Naval Undersea Warfare Center Keyport Range Complex

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

ACTION: Notice; issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that NMFS has issued a four-year Letter of Authorization (LOA) to the U.S. Navy (Navy) to take marine mammals by harassment incidental to its Research, Development, Test and Evaluation (RDT&E) activities at the NAVSEA Naval Undersea Warfare Center (NUWC) Keyport Range Complex.

DATES: Effective from May 17, 2012, through April 11, 2016.

ADDRESSES: Copies of the Navy's December 22, 2011, LOA application, and the LOA are available by writing to Tammy Adams, Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a military readiness activity if certain findings are made and regulations are issued.

Authorization may be granted for periods of 5 years or less if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to the U.S. Navy's training activities at the NAVSEA NUWC Keyport Range Complex were published on April 12, 2011 (76 FR 20257), and remain in effect through April 11, 2016. They are codified at 50 CFR part 218 subpart R. These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals by the Navy's RDT&E activities. For detailed information on these actions, please refer to the April 12, 2011, **Federal Register** notice and 50 CFR part 218 subpart R. On February 1, 2012, NMFS published a final rule (77 FR 4917) that allows for the issuance of multi-year LOAs, as long as the regulations governing such LOAs are valid.

Summary of LOA Request

On December 23, 2011, NMFS received an application from the U.S. Navy for an LOA covering the Navy's RDT&E activities at the NAVSEA NUWC Keyport Range Complex off the coast and inland waters of Washington State under the regulations issued on April 12, 2012 (76 FR 20257). The application requested authorization, for a period of four years, to take, by harassment, marine mammals incidental to proposed training activities that involve the use of low-intensity sonar and other active acoustic devices.

Summary of Activity Under the 2011 LOA

As described in the Navy's Annual Range Complex Exercise Report for the NAVSEA NUWC Keyport Range Complex, between April and September 2011, the RDT&E activities conducted by the Navy were within the scope and amounts contemplated by the final rule and identified by the 2011 LOA. In fact, the number of RDT&E activities was below the Navy's proposed 2011 operations. A detailed description of the Navy's 2011 RDT&E activities can be found in the exercise report posted on NMFS Web site: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Planned Activities for 2012 Through 2016

In 2012 through April 2016, the Navy expects to conduct the same type and amount of RDT&E activities identified in the final rules and 2011 LOA. No modification is proposed by the Navy for its planned 2012—2016 activities under the 2011 rule.

Estimated Take for 2012—2016

The estimated takes for the Navy's proposed training activities are the same as those authorized in 2011. No change has been made in the estimated takes from the 2011 LOA. Summary of Monitoring, Reporting, and other requirements under the 2011 LOA

Annual Exercise Report

The Navy submitted its 2011 exercise report within the required timeframes and it is posted on NMFS Web site: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* NMFS has reviewed the report and it contains the information required by the 2011 LOA. The report lists the amount of RDT&E activities conducted between April and September 2011. For sonar operations, there was no activity conducted at the Keyport Range site and the Quinault Underwater Tracking Range (QUTR) during the reporting period. The Navy conducted 2.5 hours (2.5% of total 100 allotted hours) operations on acoustic modem testing, 0.07 hour (1.2% of total 5.83 allotted hours) of S6 acoustic source torpedoes (both electric and thermal propulsion) operation, 0.112 hour (1.9% of total 5.83 allotted hours) of S7 acoustic source torpedoes (both electric and thermal propulsion) operation, and 0.014 hour (0.2% of total 5.83 allotted hours) of S8 acoustic source torpedoes (both electric and thermal propulsion) operation.

For non-sonar activities, the Navy conducted 4 UUV operations (9% of the total 45 allotted) and 1 fleet diver activity (2% of the total 45 allotted) at the Keyport Range Site; 2 test vehicle (thermal) activities (2% of the total of 130 allotted), 7 test vehicle (electric/chemical) activities (5% of the total 140 allotted), 2 acoustic and non-acoustic (magnetic array, oxygen) testing system activities (20% of the total 10 allotted), 3 fleet submarine activities (10% of the total 30 allotted), 7 surface launch craft activities (4% of the total 180 allotted), and 2 shore and pier deployment system activities (7% of the total 30 allotted) at Dobab Bay Range Complex (DBRC).

Monitoring and Annual Monitoring Report

The Navy submitted their 2011 annual marine mammal monitoring report covering the period from May through December 2011, and the reports are posted on NMFS Web site: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* The Navy conducted the monitoring required by the 2011 LOA and described in the Monitoring Report, which included a minimum of two special visual surveys per year to monitor high-frequency active sonar (HFAS) and mid-frequency active sonar (MFAS) activities, respectively, at the DBRC site. In addition, visual and passive acoustic monitoring is also required for certain activities.

For the high-frequency source event, the observers were used during a torpedo test event to demonstrate torpedo against mobile target. The active sonar levels and output were intermittent and could vary within the S6, S7, and S8 source parameters as outlined in the NMFS Final Rule (76 FR 20257).

For the mid-frequency source event, the observers were used while the Underwater Emergency Warning System (UWES) was being operated. It operates at the 700 Hz to 10.6 kHz at a source level of less than 170 dB re 1 μPa @ 1 m. The bandwidth is 18.75 Hz. This is similar to the modeled S4 source.

Vessel-based and shore-based marine mammal surveys were conducted the day before, during, and the day following the HFAS and MFAS event between November 6 and 8, 2011.

(1) Shore-Based Survey

Shore-based surveys were conducted both from the DBRC site operations center at the Zelatched Point computer site on the bluff at the 75 foot elevation above the water using ''Big-eye'' binoculars, audible and LOFAR output from the bottom moored passive acoustic monitor and by walking along the beach and looking for hauled-out, distressed, injured, or stranded marine mammals. The beach surveys covered approximately 500 meters of shoreline along the eastern shore of Dabob Bay which is in addition to the shoreline surveyed via the vessel-based surveys. However, no marine mammals were seen using shore-based survey during the pre- and post-event surveys.

No marine mammals were seen using the beach survey during HFAS and MFAS testing events. No marine mammal vocalizations were evident using the passive acoustic monitoring (PAM) either audibly or visually from the spectrum display. The PAM was monitored continuously in real time throughout the day of the event by observers including NMMO, escort Navy observer, Range Officer and other range personnel.

Vessel-Based Survey

For vessel-based surveys, the survey vessel left Naval Base Kitsap (NBK) Bangor in Hood Canal at approximately 0730 for both the pre and post surveys. The survey vessel was the NS–50 small range craft and it was used for pre- and post-event monitoring. The NS–50 vessel crew consisted of a Craft master, marine mammal lookout, and a Navy Marine Mammal Observer (NMMO). All three participated in looking for marine mammals. One observer was dedicated to the port side of the vessel and the other observer was responsible for the starboard side. The observers were also responsible for recording the global positioning system (GPS) coordinates of all sightings with a handheld GPS unit and logging the information onto datasheets. Marine mammal observations began immediately after departing NBK Bangor and continued throughout the transit to and from Dabob Bay. Observers used naked eye and 7 x 50 magnification binoculars with reticles to scan the area from dead ahead to dead astern. The survey transects were run from the south to the north on the west side of Dabob Bay and the return was north to south on the east side of Dabob Bay. This route covered the perimeter of Dabob Bay including the area used in the November 7 testing. It is possible to see from shore to shore in the Dabob Bay instrumented range. In addition to surveying over-water, the vessel based monitors also scanned the shoreline for hauled-out, distressed, injured, or stranded marine mammals. Effort and environmental information was collected when the observers began effort each day and as significant weather changes occurred.

In total, 38 sightings of marine mammals totaling 84 individuals were recorded during the two days of pre- and post-event vessel-based surveys. At least 2 species were seen: Harbor seals, California sea lions, and 2 unidentified marine mammals. A harbor seal haul-out with 16 to 26 individuals was identified on the west side of Dabob Bay just north of Pulali Point. This location has been previously identified in Jeffries *et al.* (2000) as location ID 256 and consists of intertidal rocks. According to Jeffries *et al.* (2000) this site has less than 100 individuals at any given time, but it is classified as a high use haul-out.

There were 25 sightings on the pre-survey day and 13 sightings on the post-survey day. When comparing the number of animals seen between the 2 days, the pre-survey day identified 45 individuals and the post-survey day identified 39 individuals. When looking at animals identified to species, four sea lions and 39 harbor seals were identified during the pre-survey. Two sea lions and 37 harbor seals were identified during the post-survey. No marine mammal active sounds were detected using the PAM.

There were two sightings approximately 2 hours prior to the HFAS event. One sighting was an unidentified sea lion seen feeding. The second sighting was one minute later in approximately the same location, but this sighting was identified as a harbor seal with 1 to 2 individuals possible. The sighting cues (flipper verses head) allowed the observer to distinguish the

difference between the sea lion and the seal. They did not have an obvious direction of travel and mitigation measures were not needed because sonar sources were not active at the time. The sea state was somewhat choppy during the actual HFAS test event and potentially contributed to the lack of marine mammals seen despite the elevated observation platform of the larger vessels. No marine mammals were observed before, during, or after the MFAS event.

Adaptive Management

In general, adaptive management allows NMFS to consider new information from different sources to determine (with input from the Navy regarding practicability) if monitoring efforts should be modified if new information suggests that such modifications are appropriate. All of the 5-year rules and LOAs issued to the Navy include an adaptive management component, which includes an annual meeting between NMFS and the Navy. NMFS and the Navy conducted an adaptive management meeting in October, 2011, which representatives from the Marine Mammal Commission participated in, wherein we reviewed the Navy monitoring results through August 1, 2011, discussed other Navy research and development efforts, and discussed other new information that could potentially inform decisions regarding Navy mitigation and monitoring.

For the 2012—2016 LOA, the Navy requested to make the following changes concerning marine mammal monitoring protocols. Specifically, the Navy requested to change the condition in 7(c)(i)(B) of the Monitoring and Reporting section of the LOA to address the Navy's activity monitoring logistics and to ensure that visual monitoring is conducted in suitable conditions. The language would be changed from

''For specified events, shore-based and vessel surveys shall be used 1 day prior to and 1–2 days post activity.''

to

''For specified events, shore-based and vessel surveys shall be used within 36 hours prior to and post activity during daylight hours.''

After reviewing the Navy's request, NMFS agrees with the Navy that this minor modification should be implemented in the renewed LOA.

Authorization

Since there are no changes in the Navy's proposed RDT&E activities at the NAVSEA NUWC Keyport Range Complex, NMFS' determination that the Navy's Keyport Range Complex RDT&E activities will have no more than a negligible impact on the affected species or stocks of marine mammals in the action area, as described in the original regulations, is still valid. There is no subsistence use of marine mammals that could potentially be impacted by the Navy's RDT&E activities at Keyport Range Complex. Further, the level of taking authorized in May 2012 through April 2016 for the Navy's Keyport Range Complex RDT&E activities is consistent with our previous findings made for the total taking allowed under the Keyport Range Complex regulations. Accordingly, NMFS has issued a four-year LOA for Navy's RDT&E activities conducted at the NAVSEA NUWC Keyport Range Complex from May 17, 2012, through April 11, 2016.

Dated: May 14, 2012.

Helen Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–12681 Filed 5–23–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket No. DARS 2011–0072; Sequence 02]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Government Property

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

ACTION: Notice and request for comments.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through November 30, 2012. DoD proposes that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD will consider all comments received by July 23, 2012.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0246, using any of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

○ *Email: dfars@osd.mil.* Include OMB Control Number 0704–0246 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Meredith Murphy, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment, please check *www.regulations.gov* approximately two to three days after submission to verify posting, except allow 30 days for posting of comments submitted by mail.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, 571–372–6098. The information collection requirements addressed in this notice are available on the World Wide Web at: *http://www.acq.osd.mil/dpap/dars/dfars.html.* Paper copies are available from Ms. Meredith Murphy, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

SUPPLEMENTARY INFORMATION:

Title, Associated Forms, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) part 245, Government Property, DFARS section 211.274, Reporting of Government-Furnished Equipment in the DoD Item Unique Identification (IUID) Registry; the related clauses at DFARS 252.245–7000 through –7004 and 252.211–7007; and the related forms, including DD Form 1149, Requisition and Invoice/Shipping Document; DD Form 1348–1A, DoD Single Line Item Release/Receipt Document; DD Form 1637, Notice of Acceptance of Inventory Schedules; DD Form 1639, Scrap Warranty; DD Form 1640, Request for Plant Clearance; DD Form 1641, Disposal Determination/Approval; and DD Form 1822, End Use Certificate; OMB Control Number 0704–0246.

Needs and Uses: DoD needs this information to account for Government property in the possession of contractors. Property administrators, contracting officers, and contractors use this information to maintain property records and material inspection, shipping, and receiving reports.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 53,560.

Number of Respondents: 16,075.

Responses per Respondent: 2.97.

Annual Responses: 47,815.

Average Burden per Response: 1.12 hours.

Frequency: On occasion.

Summary of Information Collection

This requirement provides for the collection of information related to providing Government property to contractors; contractor use and management of Government property; and reporting, redistribution, and disposal of contractor inventory.

a. *DFARS 211.274,* Item identification and valuation requirements, and the associated clause at DFARS 252.211–7007, require contractors to provide reliable accountability of property and asset visibility throughout the property life cycle by recording the property in the DoD Item Unique Identification (IUID) Registry. (This DoD IUID recording replaced the annual report for contracts involving Government property on DD Form 1662 in the 2009 information collection update.)

b. DFARS 245.302(1)(i) requires contractors to request and obtain contracting officer approval before using Government property on work for foreign governments and international organizations.

c. DFARS 245.604–3 concerns the sale of surplus Government property. Under paragraph (b), a contractor may be directed by the plant clearance officer to issue informal invitations for bid. Under paragraph (d), a contractor may be authorized by the plant clearance officer to purchase or retain Government property at less than cost if the plant clearance officer determines this method is essential for expeditious plant clearance. When using the latter method, the contractor must submit to the plant clearance officer the informal bids received and sufficient information to ensure that the Government's interests will be adequately protected.

d. DFARS subpart 245.70, Plant Clearance Forms, prescribes the requirements for the use of the following forms:

(1) *DD Form 1149,* Requisition and Invoice/Shipping Document (JUL 2006): Prescribed at DFARS 245.7001–2, the form is completed by the contractor for transfer and donation of excess contractor inventory.

(2) *DD Form 1348–1A,* DoD Single Line Item Release/Receipt Document: Prescribed at DFARS 245.7001–3, the form is used when authorized by the plant clearance officer.

(3) *DD Form 1640,* Request for Plant Clearance (JUN 2003): Prescribed at DFARS 245.7001–4, the contractor completes this form to request plant clearance assistance or transfer plant clearance.

(4) *DD Form 1641,* Disposal Determination/Approval (APR 2000): Prescribed at DFARS 245.7001–5, this form is used to record rationale for the following disposal determinations:

(i) Downgrade useable property to scrap.

(ii) Abandonment or destruction.

(iii) Noncompetitive sale of surplus property.

(iv) Other disposal actions.

(5) *DD Form 1822,* End Use Certificate: Addressed at DFARS 245.7001–6, this form is prescribed by DoDI 5230.18, entitled ''The DoD Foreign Disclosure and Technical Information System,'' and is used when directed by the plant clearance officer.

e. In addition, the following DD forms are prescribed in the clause at DFARS 252.245–7004, Reporting, Reutilization, and Disposal (AUG 2011):

(1) *DD Form 1637,* Notice of Acceptance of Inventory Schedules (JUN 2003): There is no information collection burden on contractors associated with this form. Government plant clearance officers use this form to indicate acceptance of the contractor's inventory schedules.

(2) *DD Form 1639,* Scrap Warranty: When scrap is sold by the contractor, after Government approval, the purchaser of the scrap material(s) may be required to certify, by signature on the DD Form 1639, that (i) the purchased material will be used only as scrap and (ii), if sold by the purchaser, the purchaser will obtain an identical warranty from the individual buying the scrap from the initial purchaser. The warranty contained in the DD Form 1639 expires by its terms five years from the date of the sale.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2012–12615 Filed 5–23–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review; Office of Planning, Evaluation and Policy Development; Case Studies of Current and Former Grantees under the Title III National Professional Development Program (NPDP)

SUMMARY: The purpose of the National Professional Development Program, which is administered by the Office of English Language Acquisition, is to support pre-service education and professional development activities intended to improve instruction for English Learners (ELs).

DATES: Interested persons are invited to submit comments on or before June 25, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04823. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the

Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Case Studies of Current and Former Grantees under the Title III National Professional Development Program (NPDP).

OMB Control Number: Pending.

Type of Review: New.

Total Estimated Number of Annual Responses: 438.

Total Estimated Number of Annual Burden Hours: 450.

Abstract: Grants are made to Institutions of Higher Education that have entered into consortium arrangements with states or school districts. Funded projects are designed to increase the pool of highly-qualified teachers prepared to serve EL students and increase the skills of teachers already serving them.

The purpose of this study is to examine how a sample of grantees is implementing their grants with respect to four areas: (1) The content and structure of the education they provide to current and prospective teachers of English Learners; (2) the nature of changes they attempt to make to the full teacher education program at their institutions; (3) the efforts grantees make to institutionalize their projects so that they can be sustained after the grant ends; and (4) their efforts to track former program participants. Information gathered on these four topics will be used to identify issues that could be investigated in a larger, more representative study.

This study will consist of 15 purposively-selected current grantees and nine purposively-selected former grantees. The case study sites will be selected from among the grantees in the 2007 cohort (''current grantees'') and those in the 2002 and 2004 cohorts (''former grantees''), and will provide information on some of the pre-service and in-service teacher training models and approaches that current grantees are using, as well as strategies that former grantees have used to track newly-minted teachers after program completion and to plan for continuing program services after the federal grant period.

The study will collect data from the current grantees through site visits and from the former grantees through telephone interviews.

Dated: May 18, 2012.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–12608 Filed 5–23–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Proposed Agency Information Collection

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

ACTION: Notice and Request for Comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; 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.

DATES: Comments regarding this proposed information collection must be filed by July 23, 2012. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to Jamie Vernon or by fax at 202–586–9260, or by email at *Jamie.Vernon@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jamie Vernon, *Jamie.Vernon@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.:* 1910–5164; (2) *Information Collection Request Title:* Customer Electricity Data Access and Control Questionnaire; (3) *Type of Request:* Renewal with changes; (4) *Purpose:* The U.S. Department of Energy (DOE) Office of Energy Efficiency and Renewable Energy (EERE) has developed and launched a new consumer-focused Web site (*http://openei.org/utilityaccess*) with the capability to map how and what electricity use data utilities provide to their customers. An online questionnaire device captures and publishes the necessary information as a series of web-based maps upon completion by electricity providers. Each electric utility has the opportunity to fill out a web-based questionnaire that will automatically generate the informational maps. Consumers can visit the maps and Web site to learn about data access offered by their utility and how to use energy more efficiently. Generation of such maps requires DOE to collect information from electricity providers about data access and sharing services offered to their customers. DOE is requesting a 3-year approval to continue to collect and report this information using an improved collection instrument; (5) *Annual Estimated Number of Total Responses:* 3,261; (6) *Annual Estimated Number of Burden Hours:* 761; (7) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $0.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974 (FEA Act), as amended, codified at 15 U.S.C. 772(b) and Section 1301 of the Energy Independence and Security Act of 2007 (EISA), as amended, codified at 42 U.S.C. 17381.

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

Carla Frisch,

Acting Director of Analysis, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

[FR Doc. 2012–12610 Filed 5–23–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–462–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Application

Take notice that on May 14, 2012, Transcontinental Gas Pipe Line Company, LLC (Transco), P.O. Box

1396, Houston, Texas 77251–1396, filed in Docket No. CP12–462–000 an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations seeking to amend the authorization to operate certain compression facilities in Georgia installed as part of the Mid-South Expansion Project,[1] all as more fully set forth in the application, which is on file with the Commission and open to the public for inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Specifically, Transco requests authorization to amend the authorized operation of its new 15,000 horsepower (HP) electric motor-driven compressor installed at Transco's Compressor Station 125 in Walton County. Transco currently has authority to operate the 15,000 HP electric compressor unit at a maximum of 9,000 HP. Transco now seeks authorization to operate said compressor unit at above 9,000 HP provided that the total horsepower used at Compressor Station 125 does not exceed the station's total certificated horsepower of 49,800 horsepower. Transco states that it would use automated station control systems to limit the total horsepower at Compressor Station 125. Transco also states that this would allow for more efficient operation, increase operational reliability and flexibility, and accommodate schedule maintenance.

Any questions regarding this application should be directed to Bill Hammons, Team Leader, Rates and Regulatory, P.O. Box 1396, Houston, Texas 77251, at (713) 215–2130.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Comment Date: June, 7, 2012.

Dated: May 17, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–12606 Filed 5–23–12; 8:45 am]

BILLING CODE 6717–01–P

[1] 136 FERC ¶ 61,129 (2011).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–112–000]

Southern Natural Gas Company, L.L.C.; Notice of Intent To Prepare an Environmental Assessment for the Proposed North Main Loop Line Abandonment Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the North Main Loop Line Abandonment Project (Project) involving abandonment, construction and operation of facilities by Southern Natural Gas Company, L.L.C. (SNG) in Calhoun and Cleburne Counties, Alabama. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on June 16, 2012. Further details on how to submit written comments are in the Public Participation section of this notice.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, and you are contacted by a representative of SNG about the acquisition of an easement to construct, operate, and maintain the proposed facilities, please note that the company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

SNG provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?''. This fact sheet addresses a number of typically-asked questions, including the

use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Summary of the Proposed Project

SNG proposes to abandon a portion of its approximately 70 year old North Main Loop Line in Calhoun and Cleburne Counties, Alabama. The pipeline developed wrinkle bends which caused a pipeline failure in 2009. According to SNG, its project would eliminate a portion of the wrinkle bends on SNG's North Main Loop Line and enhance its integrity. The replacement section will continue to provide safe reliable natural gas supplies to the eastern Alabama region.

The Project would consist of the following:

- Abandonment in-place of approximately 19.5 miles of 24-inch-diameter natural gas pipeline, beginning at the DeArmanville Compressor Station milepost (MP) 380.7, continuing through the Heflin Gate and ending at the Rome-Calhoun Gate (MP 400.2);
- remove the existing pig launcher at the existing Chevron Road Launcher (MP 380.7) and install it at the existing Rome-Calhoun Gate site; [1]
- abandon in-place the following:
  - a side valve assembly connecting the North Main Loop Line to SNG's White Plains Line at approximate MP 385.6; and
  - a 24-inch main line valve assembly at SNG's Heflin gate.
- Cut and cap the 24-inch-diameter North Main Loop Line at 13 road crossings;
- Install 2.2 miles of 3-inch-diameter natural gas pipeline between MP 389.8 and MP 392.0 (B–Line);
- Repair or remove two exposed segments of 24-inch-diameter North Main Loop Line at MPs 392.2 and 393.3; and
- Remove a pipeline drip assembly at approximate MP 382.5 and relocate a launcher currently located at the DeArmanville Compressor Station (approximate MP 380.7) to SNG's Rome-Calhoun Gate (approximate MP 400.2).

The general location of the project facilities is shown in Appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities and abandonment activities would disturb about 36.1 acres of land. Following construction, SNG would maintain about 10 acres for permanent operation of the Project's B–Line facilities; the remaining acreage would be restored and revert to former uses. Following completion of the project, SNG will continue to operate the other pipelines in the right-of-way of the abandoned 19.5 miles of pipeline. Therefore, SNG will not relinquish its rights under its existing easement agreements.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species; and
- Public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section of this notice.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, pig launcher removal and installation, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. 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 your comments are timely and properly recorded, please send your comments so

[1] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, § 1501.6.

[5] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

that the Commission receives them in Washington, DC on or before June 16, 2012.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP12–112–000) 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 interested persons to submit brief, text-only comments on a project;

(2) You can 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.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are available on the Commission's Web site at: *http://www.ferc.gov/help/how-to/intervene.asp.*

Additional Information

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 at *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., CP12–112). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free 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 now 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.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: May 17, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–12604 Filed 5–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14402–000]

FFP Project 109, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Competing Applications

On May 1, 2012, the FFP Project 109, LLC filed an application for a preliminary permit under section 4(f) of the Federal Power Act proposing to study the feasibility of the proposed Mississippi River Lock and Dam #24 Project No. 14402, to be located at the existing Mississippi River Lock and Dam No. 24 on the Mississippi River, near the City of Clarksville in Pike County, Missouri and Calhoun County, Illinois. The Mississippi River Lock and Dam No. 24 is owned by the United States government and operated by the United States Army Corps of Engineers.

The proposed project would consist of: (1) Fifteen new 60-foot by 80-foot reinforced concrete powerhouses, each containing two 500-kilowatt bulb turbine-generators, having a total combined generating capacity of 15 megawatts; (2) fifteen existing submersible tainter gates; (3) a new 40-foot by 35-foot substation; (4) a new 10-foot by 80-foot intake structure; (5) a new 2.8-mile-long, 34.5-kilovolt transmission line; and (6) appurtenant facilities. The project would have an estimated annual generation of 60 gigawatt-hours.

Applicant Contact: Ms. Ramya Swaminathan, 239 Causeway Street, Suite 300, Boston, MA 02114; (978) 283–2822.

FERC Contact: Tyrone A. Williams, (202) 502–6331.

Deadline for filing comments, motions to intervene, and competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end

of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14402) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: May 17, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–12603 Filed 5–23–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–458–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

Take notice that on May 9, 2012, Southern Natural Gas Company (Southern), 569 Brookwood Village, Suite 501, Birmingham, Alabama 35209, filed a prior notice application pursuant to sections 157.205 and 157.210 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act (NGA), and Southern's blanket certificate issued in Docket No. CP82–406–000, to make certain modifications at its Thomaston Compressor Station in order to increase incremental capacity on its South Main Pipeline System by 8 million cubic feet per day, all as more fully set forth in the application, which is open to the public for inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Pamela R. Donaldson, Principal Regulatory Analyst, Southern Natural Gas Company, 569 Brookwood Village, Suite 501, Birmingham, Alabama 35209 or telephone (205) 325–3739 or by email *pam.donaldson@elpaso.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: May 17, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–12605 Filed 5–23–12; 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 Midwest Independent Transmission System Operator, Inc. (MISO):

Planning Advisory Committee—May 30, 2012.

RECB Task Force—May 31, 2012.

Order 1000 Right of First Refusal (ROFR) Task Team—June 1, 2012.

The above-referenced meeting will be held at:

MISO Headquarters, 720 City Center Drive, Carmel, IN 46032.

The above-referenced meeting is open to the public.

Further information may be found at *www.misoenergy.org.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. ER12–1577–000, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–715, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–480, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–309, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER11–1844, *Midwest Independent Transmission System Operator, Inc.*

Docket No. EL11–56, *FirstEnergy Service Company.*

Docket No. EL11–30, *E.ON Climate & Renewables North America, LLC* v. *Midwest Independent Transmission System Operator, Inc.*

Docket No. EL12–24–000, *Pioneer Transmission LLC* v. *Midwest Independent Transmission System Operator, Inc.*

Docket No. EL12–28–000, *Xcel Energy Services Inc.* v. *American Transmission Company, LLC.*

Docket No. OA08–53, *Midwest Independent Transmission System Operator, Inc.*

For more information, contact Christopher Miller, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov.*

Dated: May 17, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–12607 Filed 5–23–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2011–0280, FRL–9677–6]

Agency Information Collection Activities; Proposed Collection; Comment Request; 2013 Hazardous Waste Report, Notification of Regulated Waste Activity, and Part A Hazardous Waste Permit Application and Modification

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to amend an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on December 31, 2014. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 23, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2011–0280, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: rcra-docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* RCRA Docket (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460.
- *Hand Delivery:* 1301 Constitution Ave. NW., Room 3334, 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–2011–0280. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Peggy Vyas, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703–308–5477; fax number: 703–308–8433; email address: *vyas.peggy@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–RCRA–2011–0280, which is available for online viewing at *www.regulations.gov,* or in person viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 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 RCRA Docket is (202) 566–0270.

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.

In addition, EPA is requesting comments on some proposed changes to the Hazardous Waste Report form and instructions designed to clarify long-standing points of confusion. Some of these changes are scheduled for the 2011 booklet, some for the 2013 booklet. The proposed changes can be found in a draft Hazardous Waste Report From and Instructions booklet in the docket for this notice.

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 business or other for-profit as well as State, Local, or Tribal governments.

Title: Hazardous Waste Report, Notification of Regulated Waste Activity, and Part A Hazardous Waste Permit Application and Modification

ICR numbers: EPA ICR No. 0976.14, OMB Control No. 2050–0024.

ICR status: This ICR is currently scheduled to expire on December 31, 2014. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Hazardous Waste Report Instructions and Forms booklet is updated every two years, to comply with the statutory mandate that EPA conduct a survey of hazardous waste generation at least every two years. The report, known as the ''Biennial Report,'' has been conducted since 1989, every odd-numbered year, known as the data collection year. The even-numbered years are known as the reporting years. The ICR has been renewed every data collection year, and the forms have been made available to respondents at the beginning of the reporting year. However, EPA is amending the current ICR this year so that the booklet for the next cycle, the 2013 cycle, will be available at the beginning of the data collection year. This change is in response to many requests by States.

The proposed changes to the 2013 booklet include: (1) Some management method codes will be consolidated in order to ease reporting, (2) the waste minimization codes will be revised in order to assist filers with reporting their waste minimization activities, and (3) editorial changes will be made to the description of some source codes in order to improve clarity for filers.

This amendment will not affect the Notification booklet or the Part A Permit Application booklet, which are both part of this ICR.

Burden Statement: The annual reporting burden for the Hazardous Waste Report is estimated to average 17 hours per respondent, and includes time for reviewing instructions, gathering data, completing and reviewing the forms, and submitting the report. The recordkeeping requirement is estimated to average 4 hours per response and includes the time for filing and storing the Hazardous Waste Report submission for three years.

The annual public reporting and recordkeeping burden for the Notification of Regulated Waste Activity is estimated to average 2 hours per response for the initial notification, and 1 hour per response for any subsequent notifications.

The annual public reporting and recordkeeping burden for the Part A Permit Application is estimated to average 25 hours per response for an initial application and 13 hours per response for a revised application.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 56,800.

Frequency of response: biennially, and on occasion.

Estimated total average number of responses for each respondent: varies.

Estimated total annual burden hours: 422,633 hours.

Estimated total annual costs: $16,540,823. This includes an estimated burden cost of $16,339,984 in annualized labor cost and $200,839 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 the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, 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: May 10, 2012.

Suzanne Rudzinski,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2012–12628 Filed 5–23–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2012–0033; FRL–9674–7]

Agency Information Collection Activities; Proposed Collection; Comment Request; Valuing Improved Water Quality in the Chesapeake Bay Using Stated Preference Methods; EPA ICR No. 2456.01, OMB Control No. 20XX—New

AGENCY: Environmental Protection Agency.

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 comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 23, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OA–2012–0033 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: oei.docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Office of Environmental Information, Environmental Protection Agency, Mailcode: 28221T, 1200

Pennsylvania Ave. NW., Washington, DC 20460.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OA–2012–0033. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Dr. Nathalie Simon, National Center for Environmental Economics, Office of Policy, (1809T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–566–2347; fax number: 202–566–2363; email address: *simon.nathalie@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–OA–2012–0033, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752.

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?

Docket ID No. EPA–HQ–OA–2012–0033.

Affected entities: Entities potentially affected by this action are members of the general public who may be contacted to participate in the study.

Title: Willingness to Pay for Improved Water Quality in the Chesapeake Bay.

ICR numbers: EPA ICR No. 2456.01, OMB Control No. 2012-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 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: On May 12, 2009 the President signed Executive Order 13508 calling for the protection and restoration of the Chesapeake Bay. In response to the Executive Order and other considerations the Environmental Protection Agency established Total Maximum Daily Loads (TMDLs) of nitrogen, phosphorus, and sediment for the Chesapeake Bay. These TMDLs called for reductions of 25, 24, and 20%, respectively, of these pollutants (EPA 2011).

The Chesapeake Bay watershed encompasses 64,000 square miles in parts of six states and the District of Columbia. While efforts have been underway to restore the Bay for more than 25 years, and significant progress has been made over that period, the TMDLs are necessary to continue progress toward the goal of a healthy Bay. As might be expected, a program on this scale is likely to be expensive. A 2004 report on implementation of the ''tributary strategies'' proposed under an earlier plan for Bay restoration

estimated their cost at $28 billion in capital costs plus an additional $2.7 billion dollars per year in perpetuity for operating and maintenance costs (Blue Ribbon Panel 2004). The watershed states of New York, Pennsylvania, Delaware, West Virginia, Virginia, and Maryland, as well as the District of Columbia, have developed Watershed Implementation Plans (WIPs) detailing the steps each will take to meet its obligations under the TMDLs. EPA has begun a new study to estimate costs of compliance with the TMDLs. While these costs may prove high, a multitude of benefits may also be anticipated to arise from restoring the Chesapeake Bay. It is important to put cost estimates in perspective by estimating corresponding benefits.

EPA's National Center for Environmental Economics (NCEE) is undertaking a benefits analysis of improvements in Bay water quality under the TMDLs, as well as of ancillary benefits that might arise from terrestrial measures taken to improve water quality. As part of this analysis, NCEE plans to conduct a broad-based inquiry into benefits using a state-of-the-art stated preference survey. Benefits from the TMDLs for the Chesapeake will accrue to those who live on or near the Bay and its tributaries, as well as to those who live further away and may never visit the Bay but have a general concern for the environment. The latter category of benefits is typically called ''non-use values'' and estimating the monetary value can only be achieved through a stated preference survey.

In addition, a stated preference survey is able to estimate ''use values,'' those benefits that accrue to individuals who choose to live on or near the Bay or recreate in the watershed. Stated preference surveys allow the analyst to define a specific object of choice or suite of choices such that benefits are defined in as precise a manner as feasible. While use benefits of water quality improvements in the Chesapeake Bay watershed will also be estimated through other revealed preference methods, the stated preference survey allows for careful specification of the choice scenarios and will complement estimates found using other methods.

Participation in the survey will be voluntary and the identity of the participants will be kept confidential.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 1500.

Frequency of response: once.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 750 hours.

Estimated total annual costs: $ 15,975. This includes estimated respondent burden costs only as there are no capital costs or operating and maintenance costs associated with this collection of information.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. 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: May 2, 2012.

Al McGartland,

Office Director, National Center for Environmental Economics.

[FR Doc. 2012–12298 Filed 5–23–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2012–0209; FRL–9351–1]

Enforceable Consent Agreement Development for Two Cyclic Siloxanes; Solicitation of Interested Parties and Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is giving notice of a public meeting to negotiate an enforceable consent agreement (ECA) to collect certain environmental monitoring data on octamethylcyclotetrasiloxane (D4) and decamethylcyclopentasiloxane (D5). A private organization has submitted a proposed ECA to EPA. EPA has evaluated the proposal and believes that proceeding with the negotiation of a consent agreement is an efficient means of developing the data, and now solicits additional persons with an interest in participating in the negotiations to notify EPA and announces a public meeting to initiate negotiations.

DATES: The meeting to initiate ECA negotiations for D4 and D5 environmental monitoring will be held on Wednesday, June 27, 2012 from 10 a.m. to 1 p.m.

While this meeting is open to the public, you must notify EPA in writing on or before June 25, 2012, if you wish to be considered an ''interested party'' and participate in the ECA negotiations for D4 and D5 environmental monitoring.

To request accommodation of a disability, please contact the technical person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: Your written notification that you wish to participate in the ECA negotiation must be submitted to the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

The public meeting to initiate negotiations on an ECA for D4 and D5 will be held at the Environmental Protection Agency, EPA East, Room 1117A, 1201 Constitution Ave. NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Robert Jones, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, East Building, 1200 Pennsylvania Avenue NW., Room 4328G, Washington, DC 20460–0001;

telephone number: (202) 564–8161, fax number: (202) 564–4765; email address: *jones.robert@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

Does this action apply to me?

This action is directed to the public in general, and may be of particular interest to manufacturers, importers, processors, exporters, distributors, and users of D4 and D5. Because 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 completion of the ECA or the availability of the proposal for this effort, consult the technical contact listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

Octamethylcyclotetrasiloxane (D4) (CASR No. 566–67–2) and decamethylcyclopentasiloxane (D5) (CASR No. 541–02–6) are high production volume chemicals having a wide variety of industrial, commercial, and consumer uses. D4 and D5 are highly persistent in sediment and highly bioaccumulative in benthic and aquatic species. Data show D4 to be toxic to aquatic and sediment-dwelling species. EPA has concerns regarding the environmental effects of D4 and D5. Environmental monitoring could help develop a better understanding of the potential effects of these chemicals in the environment.

D4 is an intermediate for silicone copolymers. It is used commercially and has consumer uses in polishes, sanitation, soaps, detergents, adhesives, sealants, and rubber and plastic products. D4 is also used in processing applications such as coupling, blocking or release agents, and synthesis reagents.

D5 is commonly used in personal care products, paints, coatings, paper and textiles, defoamers, release agents, surfactants in cleaning products, and adhesives. It is used as a processing solvent in chemical, resin, and synthetic rubber manufacture and as a chemical intermediate, lubricant, and dry cleaning agent.

Further information on D4 and D5, including existing test data and a product stewardship program developed by Dow Corning, can be found in the public docket for this notice.

III. Solicitation of Interested Parties

EPA is soliciting interested parties to monitor or participate in testing negotiations for an ECA concerning D4 and D5 environmental monitoring. The Silicone Environmental Health and Safety Council (SEHSC), the submitter of the ECA proposal for the environmental monitoring of D4 and D5, is already considered an interested party and does not need to respond to this notice.

In accordance with 40 CFR 790.22(b), any other person who notifies EPA in writing on or before June 25, 2012 of his/her interest in participating in the negotiations will be given the status of ''interested party'' and will be permitted to participate in the negotiation process (other members of the public may attend the negotiation meeting(s), but will not be permitted to participate in the negotiation). Persons who wish to be designated an ''interested party'' must submit written notice to the technical contact person listed under **FOR FURTHER INFORMATION CONTACT**.

IV. Public Participation in Negotiations

The procedural rule for ECAs (40 CFR 790.22, Procedures for developing consent agreements) contains provisions to ensure that the public is afforded a chance to participate in ECA negotiations, and that the views of interested parties are taken into account during the ECA negotiation process. All negotiating meetings for the development of this ECA will be open to the public and minutes of each meeting will be prepared by EPA and placed in the docket for this notice.

EPA will advise interested parties and the public of meeting dates and make available meeting minutes, the proposed consent agreement, background documents, and other materials distributed at negotiation meetings. The negotiation time schedule will be established at the first negotiation meeting and will not exceed a period of 6 months from the initial meeting. If an ECA is not final within 6 months from the initial meeting and EPA does not choose to extend the negotiation time period, negotiations will be terminated and any unmet data needs may be pursued via a test rule promulgated under TSCA section 4.

EPA will circulate a draft of the ECA to all interested parties if EPA concludes that such draft is likely to achieve final agreement, and 30 days will be provided for submitting comments or written objections. EPA will enter into consent agreements only where there is a consensus among the agency, one or more manufacturers and/or processors who agree to conduct or sponsor the testing, and all other interested parties who identify themselves in accordance with 40 CFR 790.22(b)(2). Details on the procedures for developing consent agreements can be found in 40 CFR 790.22. Details on what an ECA must include can be found in 40 CFR 790.60.

V. Supporting Documentation

Meeting minutes, the proposed consent agreement(s), background documents, and other materials distributed at negotiation meetings will be placed in an Internet-accessible public docket identified by docket number EPA–HQ–OPPT–2012–0209, available online at *http://www.regulations.gov.* The docket for this notice contains the following:

1. SEHSC. Environmental Monitoring Proposal for Certain Cyclic Siloxanes—D4 and D5. Power Point Presentation. March 1, 2012.
2. USEPA Testing Consent Order for Octamethylcyclotetrasiloxane. Final Rule. 54 FR 818, January 10, 1989.
3. SEHSC. Memorandum from Karluss Thomas. Executive Director, SEHSC to Maria J. Doa, Director, Chemical Control Division, Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency. Re: Proposed Terms of Environmental Monitoring Proposal for Certain Cyclic Siloxanes. March 1, 2012.
4. SEHSC. Attachment 1. Proposed Terms of Enforceable Consent Agreement for D4 and D5 Environmental Monitoring Program. March 1, 2012.
5. SEHSC Attachment 2. Draft Project Charter: Proposed 5–year monitoring plan for cyclic volatile methylsiloxane (cVMS) materials in surface sediment and aquatic biota of the Inner Oslo Fiord, Norway. March 7, 2012.
6. USEPA. Product Stewardship Program for Six Siloxanes Conducted Under a Memorandum of Understanding (MOU) Signed by EPA and the Dow Corning Corporation; Notice of Receipt and Availability of the MOU Data. 74 FR 38013, July 30, 2009.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 17, 2012.

Jim Jones,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2012–12626 Filed 5–23–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9675–8]

National Environmental Justice Advisory Council; Notification of Public Meeting and Public Comment

AGENCY: Environmental Protection Agency.

ACTION: Notification of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will meet on the dates and times described below. All meetings are open to the public. Members of the public are encouraged to provide comments relevant to the specific issues being considered by the NEJAC. For additional information about registering for public comment, please see **SUPPLEMENTARY INFORMATION**. Due to limited space, seating at the NEJAC meeting will be on a first-come, first-served basis.

DATES: The NEJAC meeting will convene Tuesday, July 24, 2012, from 9:00 a.m. until 3:45 p.m.; and will reconvene on Wednesday, July 25, 2012, from 9:00 a.m. to 5:00 p.m. All noted times are Eastern Time.

One public comment period relevant to the specific issues being considered by the NEJAC (see **SUPPLEMENTARY INFORMATION**) is scheduled for Tuesday, July 24, 2012, from 4:00 p.m. Eastern Time. Members of the public who wish to participate during the public comment period are highly encouraged to pre-register by Noon Eastern Time on Friday, July 6, 2012.

ADDRESSES: The NEJAC meeting will be held at the EPA Potomac Yard Conference Center, located at 2777 Crystal Drive, Crystal City, Virginia.

FOR FURTHER INFORMATION CONTACT: Questions concerning the meeting should be directed to Mr. Aaron Bell, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., (MC2201A), Washington, DC 20460; by telephone at 202–564–1044, via email at *Bell.Aaron@epa.gov*; or by FAX at 202–501–0936. Additional information about the meeting is available at the following Web site address: *http://www.epa.gov/environmentaljustice/nejac/meetings.html.*

Registration is required for all participants. Pre-registration by Noon Eastern Time, Friday, July 6, 2012, for all attendees is highly recommended. Because this NEJAC meeting will be held in a government space, we strongly encourage you to register early. Space limitations may not allow us to accommodate everyone who is interested in attending. Priority admission will be given to pre-registered participants. To register online, visit the Web site address above. Alternatively, registration forms should be faxed to Ms. Estela Rosas, EPA Contractor, APEX Direct, Inc., at 877–773–0779, or emailed to *NEJACJuly2012Meeting@AlwaysPursuingExcellence.com*. Please state whether you would like to be put on the list to provide oral public comment. Please specify whether you are submitting written comments before the July 6, 2012, deadline. Non-English speaking attendees wishing to arrange for a foreign language interpreter may make appropriate arrangements in writing using the above telephone number.

SUPPLEMENTARY INFORMATION: The Charter of the NEJAC states that the advisory committee shall provide independent advice to the EPA Administrator about areas that may include, among other things, ''advice about broad, cross-cutting issues related to environmental justice, including environment-related strategic, scientific, technological, regulatory, and economic issues related to environmental justice.''

The meeting shall be used to receive comments, and discuss and provide recommendations regarding these primary areas: (1) EPA's Plan EJ 2014; (2) NEJAC's Science And Research Work Group; (3) NEJAC's Indigenous Peoples Work Group and; (4) NEJAC's Permitting Work Group.

A. *Public Comment:* Individuals or groups making oral presentations during the public comment periods will be limited to a total time of five minutes. To accommodate the large number of people who want to address the NEJAC, only one representative of an organization or group will be allowed to speak. If time permits, multiple representatives from the same organization can provide comment at the end of the session. In addition, those who did not sign up in advance to give public comment can sign up on site. The suggested format for written public comments is as follows: Name of Speaker; Name of Organization/Community; City and State; Email address; and a brief description of the concern and what you want the NEJAC to advise EPA to do. Written comments received by Noon Eastern Time, Friday, July 6, 2012, will be included in the materials distributed to the members of the NEJAC. Written comments received after that date and time will be provided to the NEJAC as time allows. All information should be sent to the mailing address, email address, or fax number listed in the **FOR FURTHER INFORMATION CONTACT** section above.

B. *Information about Services for Individuals with Disabilities:* For information about access or services for individuals with disabilities, please contact Ms. Estela Rosas, EPA Contractor, APEX Direct, Inc., at 877–773–0779 or *NEJACJuly2012Meeting@AlwaysPursuingExcellence.com.* To request special accommodations for a disability, please contact Ms. Rosas at least seven (7) working days prior to the meeting, to give EPA sufficient time to process your request. All other requests specifically related to the meeting should be sent to the mailing address, email address, or fax number listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Dated: May 17, 2012.

Victoria J. Robinson,

Designated Federal Officer, National Environmental Justice Advisory Council.

[FR Doc. 2012–12629 Filed 5–23–12; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9677–5]

Proposed CERCLA Agreement for Recovery of Past Response Costs; Piqua Hospital Site

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Piqua Hospital Site (Site ID Number B5RB) in Piqua, Ohio with the following settling parties: Hospdela LLC and Dr. Enrique De La Piedra. The settlement requires the settling parties to pay $20,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling parties pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a). For 30 days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to

the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper or inadequate. The Agency's response to any comments received will be available for public inspection at 77 West Jackson Boulevard, 7th floor Superfund File Room, Chicago, Illinois.

DATES: Comments must be submitted on or before June 25, 2012.

ADDRESSES: The proposed settlement is available for public inspection at 77 West Jackson Boulevard, 7th floor Superfund File Room, Chicago, Illinois. A copy of the proposed settlement may be obtained from Deborah Carlson, Associate Regional Counsel, C–14J, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone: 312–353–6121. Comments should reference the Piqua Hospital Site in Piqua, Ohio and EPA Docket No. V–W–09–C–922 and should be addressed to Deborah Carlson, Associate Regional Counsel, C–14J, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Deborah Carlson, Associate Regional Counsel, C–14J, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone 312–353–6121

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, *et seq.*

Dated: May 11, 2012.

Richard C. Karl,

Director, Superfund Division, Region 5, United States Environmental Protection Agency.

[FR Doc. 2012–12627 Filed 5–23–12; 8:45 am]

BILLING CODE P

FEDERAL COMMUNICATIONS COMMISSION

[DA 12–733]

Notice of Suspension and Commencement of Proposed Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (the ''Bureau'') gives notice of Mr. Jonathan M. Slaughter's suspension from the schools and libraries universal service support mechanism (or ''E-Rate Program''). Additionally, the Bureau gives notice that debarment proceedings are commencing against him. Mr. Slaughter, or any person who has an existing contract with or intends to contract with him to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support, may respond by filing an opposition request, supported by documentation.

DATES: Opposition requests must be received by 30 days from the receipt of the suspension letter or June 25, 2012, whichever comes first. The Bureau will decide any opposition request for reversal or modification of suspension or debarment within 90 days of its receipt of such requests.

FOR FURTHER INFORMATION CONTACT: Joy Ragsdale, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–A236, 445 12th Street SW., Washington, DC 20554. Joy Ragsdale may be contacted by phone at (202) 418–1697 or email at *Joy.Ragsdale@fcc.gov.* If Ms. Ragsdale is unavailable, you may contact Ms. Theresa Cavanaugh, Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by email at *Theresa.Cavanaugh@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau has suspension and debarment authority pursuant to 47 CFR 54.8 and 47 CFR 0.111(a)(14). Suspension will help to ensure that the party to be suspended cannot continue to benefit from the schools and libraries mechanism pending resolution of the debarment process. Attached is the suspension letter, DA 12–452, which was mailed to Mr. Slaughter and released on March 22, 2012. The complete text of the notice of suspension and initiation of debarment proceedings is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street SW., Room CY–A257, Washington, DC 20554, In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov.* The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via email *http://www.bcpiweb.com.*

Federal Communications Commission.

Theresa Z. Cavanaugh,

Chief, Investigations and Hearings Division, Enforcement Bureau.

May 9, 2012

DA 12–733

SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED AND EMAIL

Mr. Jonathan M. Slaughter
c/o William R. Blanchard, Jr.
Blanchard Law Offices
505 South Perry Street
Montgomery, AL 36104

Re: Notice of Suspension and Initiation of Debarment Proceeding

File No. EB–12–IH–0050

Dear Mr. Slaughter:

The Federal Communications Commission (Commission or FCC) has received notice of your conviction for mail fraud in violation of 18 U.S.C 1341 in connection with your participation in the federal schools and libraries universal service support mechanism (E-Rate program).[1] Consequently, pursuant to 47 CFR 54.8, this letter constitutes official notice of your suspension from the E-Rate program. In addition, the Enforcement Bureau (Bureau) hereby notifies you that it will commence debarment proceedings against you.[2]

I. Notice of Suspension

The Commission has established procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the [E-Rate program]'' from receiving the benefits associated with that program.[3] The

[1] Any further reference in this letter to ''your conviction'' refers to your guilty plea and subsequent sentencing for mail fraud in *United States* v. *Jonathan Michael Slaughter*, Criminal Case No. 2:11cr162–MEF–01, Judgment (M.D. Ala. 2012) (*Judgment*).

[2] See 47 CFR 0.111 (delegating authority to the Bureau to resolve universal service suspension and debarment proceedings). The Commission adopted debarment rules for the E-Rate program in 2003. *See Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) (Second Report and Order) (adopting § 54.521 to suspend and debar parties from the E-Rate program). In 2007 the Commission extended the debarment rules to apply to all federal universal service support mechanisms. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, Report and Order, 22 FCC Rcd 16372, app. C at 16410–12 (2007) (*Program Management Order*) (renumbering § 54.521 of the universal service debarment rules as § 54.8 and amending subsections (a)(1), (a)(5), (c), (d), (e)(2)(i), (e)(3), (e)(4), and (g)).

[3] *Second Report and Order*, 18 FCC Rcd at 9225, para. 66; *Program Management Order*, 22 FCC Rcd at 16387, para. 32. The Commission's debarment rules define a ''person'' as ''[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however organized.'' 47 CFR 54.8(a)(6).

Commission's rules are designed to ensure that all E-Rate funds are used for their intended purpose.[4] For example, schools and libraries must apply and meet certain qualifications to be eligible to receive E-Rate funds.[5] Additionally, services purchased at a discount under the E-Rate program cannot be ''sold, resold, or transferred * * * [for] money or any other thing of value.''[6]

On September 29, 2011, you pled guilty to committing fraudulent activities associated with the E-Rate program while you were owner and president of E-Rate Consulting Services, LLC (ECS) in Montgomery, Alabama.[7] ECS assisted schools and school districts in their efforts to qualify for E-Rate funding.[8] ECS arranged to receive through the mail its clients' E-Rate checks, and was supposed to forward those checks to the clients.[9] Between May 2006 and January 2009, however, you converted approximately $892,000 in E-Rate funds to your personal use without your clients' knowledge.[10] Specifically, you deposited E-Rate checks payable to your clients into an ECS bank account and, instead of transmitting the E-Rate funds to your clients, kept the money and used it largely for your personal expenses.[11] Your fraudulent scheme affected six schools and 14 school districts located in 13 states.[12]

On January 6, 2012, the United States District Court for the Middle District of Alabama sentenced you to serve 51 months in prison followed by three years of supervised release.[13] The court also ordered you to pay a $100 special assessment.[14]

Pursuant to § 54.8(b) of the Commission's rules,[15] upon your conviction the Bureau is required to suspend you from participating in any activities associated with or related to the E-Rate program, including the receipt of funds or discounted services through the E-Rate program, or consulting with, assisting, or advising applicants or service providers regarding the E-Rate program.[16] Your suspension becomes effective upon receipt of this letter or its publication in the **Federal Register**, whichever comes first.[17]

In accordance with the Commission's suspension and debarment rules, you may contest this suspension or the scope of this suspension by filing arguments, with any relevant documents, within thirty (30) calendar days of receipt of this letter or its publication in the **Federal Register**, whichever comes first.[18] Such requests, however, will not ordinarily be granted.[19] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[20] The Bureau will decide any request to reverse or modify a suspension within ninety (90) calendar days of its receipt of such request.[21]

II. Initiation of Debarment Proceedings

In addition to requiring your immediate suspension from the E-Rate program, your conviction is cause for debarment as defined in § 54.8(c) of the Commission's rules.[22] Therefore, pursuant to § 54.8(b) of the rules, your conviction requires the Bureau to commence debarment proceedings against you.[23]

As with the suspension process, you may contest the proposed debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within thirty (30) calendar days of receipt of this letter or its publication in the **Federal Register**, whichever comes first.[24] The Bureau, in the absence of extraordinary circumstances, will notify you of its decision to debar within ninety (90) calendar days of receiving any information you may have filed.[25] If the Bureau decides to debar you, its decision will become effective upon either your receipt of a debarment notice or publication of the decision in the **Federal Register**, whichever comes first.[26]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the E-Rate program for three years from the date of debarment.[27]

The Bureau may set a longer debarment period or extend an existing debarment period if necessary to protect the public interest.[28]

Please direct any response, if sent by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street SW., Room TW–A325, Washington, DC 20554, to the attention of Joy M. Ragsdale, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–A236, with a copy to Theresa Z. Cavanaugh, Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C322, Federal Communications Commission. All messenger or hand delivery filings must be submitted without envelopes.[29] If sent by commercial overnight mail (other than U.S. Postal Service (USPS) Express Mail and Priority Mail), the response must be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by USPS First Class, Express Mail, or Priority Mail, the response should be addressed to Joy Ragsdale, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street SW., Room 4–A236, Washington, DC 20554, with a copy to Theresa Z. Cavanaugh, Chief, Investigations and Hearings Division, Enforcement Bureau,

[4] *In the Matter of NEC-Business Network Solutions, Inc.*, Notice of Debarment and Order Denying Waiver Petition, 21 FCC Rcd 7491, 7493, para. 7 (2006).

[5] 47 CFR 54.501.

[6] *Id.* 54.513(a).

[7] *United States* v. *Jonathan Slaughter*, Case No. 2:11cr162–MEF–01, Plea Agreement at 3–4 (M.D. Ala. 2011) (*Plea Agreement*).

[8] *Id.* at 4.

[9] *Id.*; Justice News, *Dep't of Justice*, Montgomery Man Pleads Guilty to Stealing $892,000 from Schools in 13 States, Sept. 29, 2011, *http://www.justice.gov/usao/alm/press/current_press/2011_09_29_slaughter.pdf* (*Press Release*).

[10] Plea Agreement at 4–5.

[11] *Id.*

[12] *Id.* See Appendix.

[13] Judgment at 2–3.

[14] *Id.* at 5.

[15] 47 CFR 54.8(b); see *Second Report and Order*, 18 FCC Rcd at 9225–27, paras. 67–74.

[16] 47 CFR 54.8(a)(1), (d).

[17] *Second Report and Order*, 18 FCC Rcd at 9226, para. 69; 47 CFR 54.8(e)(1).

[18] 47 CFR 54.8(e)(4).

[19] *Id.*

[20] Id. 54.8(f).

[21] See *Second Report and Order*, 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5).

[22] ''Causes for suspension and debarment are conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural healthcare support mechanism, and the low-income support mechanism.'' 47 CFR 54.8(c). Associated activities ''include the receipt of funds or discounted services through [the federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the federal universal service] support mechanisms.'' *Id.* 54.8(a)(1).

[23] *Id.* 54.8(b).

[24] *Second Report and Order*, 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(3).

[25] *Second Report and Order*, 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5).

[26] 47 CFR 54.8(e)(5). The Commission may reverse a debarment, or may limit the scope or period of debarment, upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. *Id.* 54.8(f).

[27] *Second Report and Order*, 18 FCC Rcd at 9225, para. 67; 47 CFR 54.8(d), (g).

[28] 47 CFR 54.8(g).

[29] See *FCC Announces Change in Filing Location* for Paper Documents, Public Notice, 24 FCC Rcd 14312 (2009) for further filing instructions.

Federal Communications Commission, 445 12th Street SW., Room 4–C322, Washington, DC 20554. You shall also transmit a copy of your response via email to Joy M. Ragsdale, *Joy.Ragsdale@fcc.gov* and to Theresa Z. Cavanaugh, *Terry.Cavanaugh@fcc.gov.*

If you have any questions, please contact Ms. Ragsdale via U.S. postal mail, email, or by telephone at (202) 418–1697. You may contact me at (202) 418–1553 or at the email address noted above if Ms. Ragsdale is unavailable.

Sincerely yours,

Theresa Z. Cavanaugh
Chief Investigations and Hearings Division, Enforcement Bureau.

cc: Johnnay Schrieber, Universal Service Administrative Company (via email)

Rashann Duvall, Universal Service Administrative Company (via email)

Andrew O. Schiff, Assistant United States Attorney, United States Department of Justice (via email)

ECS' Clients	State	Total amount converted
Dermott Public School District	Arkansas	$6,809.24
Citrus County School District	Florida	678,288.69
Eckerd Halfway House/E-Ku Sumee	Florida	5,670
Hendry County School District	Florida	39,031.19
Kuna Joint School District	Idaho	3,523.67
Middleton School District #134	Idaho	4,299.25
The Winchendon School	Massachusetts	8,316.00
Northwood Children's Services	Minnesota	24,797.66
Prairie Academy	Minnesota	4,673.99
Poplar Bluff School District	Missouri	7,672.77
Red Cloud Community School District	Nebraska	2,254.52
SAU 41—Hollis Brookline Schools	New Hampshire	1,765.18
Beaufort County School District	North Carolina	9,730.00
Middle Ohio Education	Ohio	23.01
Penns Valley Area School District	Pennsylvania	10,966.83
Bedford County School District	Tennessee	23,215.94
Banquete Independent School District	Texas	18,655.72
Cleburne Independent School District	Texas	7,231.32
Leander Independent School District	Texas	31,872.31
Teague Independent School District	Texas	3,190.56
Total		891,987.85

[FR Doc. 2012–12663 Filed 5–23–12; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 12–07]

Notice of Inquiry; Solicitation of Views on Requests To Develop and Release Container Freight Rate Indices for U.S. Agricultural Exports Based on a Sampling of Service Contracts Filed With the FMC

AGENCY: Federal Maritime Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Maritime Commission (''FMC'' or ''Commission'') is issuing this Notice of Inquiry (''NOI'') to solicit public comment on informal requests the Commission has received from some large U.S. exporters and intermediaries to develop and release container freight indices for U.S. agricultural exports. The Commission is seeking written comments and information from U.S. exporters, intermediaries, ocean carriers, and any other interested parties on (1) Whether and to what extent the shipping public would find targeted U.S. export rate indices beneficial; (2) whether the Commission should extract rate information from service contracts or whether suitable alternatives exist; (3) the positive and negative influences on the export commodities and ocean transportation marketplaces of the greater transparency such indices might provide; and (4) whether, these indices, if developed, should be commodity specific for different prescribed routes or whether more broadly based indices would meet U.S. exporters' needs.

DATES: Responses are due on or before July 9, 2012.

ADDRESSES: Submit comments to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Room 1046, Washington, DC 20573–0001. Or email non-confidential comments to: *secretary@fmc.gov* (email comments as attachments preferably in Microsoft Word or PDF).

FOR FURTHER INFORMATION CONTACT: Sandra L. Kusumoto, Director, Bureau of Trade Analysis, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, Telephone: (202) 523–5796, Email: *skusumoto@fmc.gov*.

SUPPLEMENTARY INFORMATION:

Submit Comments: Non-confidential filings may be submitted in hard copy or by email as an attachment (preferably in Microsoft Word or PDF) addressed to *secretary@fmc.gov* on or before July 9, 2012. Include in the subject line: ''FMC Export Index—Response to NOI''. Responses to this inquiry that seek confidential treatment must be submitted in hard copy by U.S. mail or courier. Confidential filings must be accompanied by a transmittal letter that identifies the filing as ''confidential'' and describes the nature and extent of the confidential treatment requested, e.g., commercially sensitive data. When submitting documents in response to the NOI that contain confidential information, the confidential copy of the filing must consist of the complete filing and be marked by the filer as ''Confidential–Restricted,'' with the confidential material clearly marked on each page. When a confidential filing is submitted, an original and one additional copy of the public version of the filing must be submitted. The public version of the filing should exclude confidential materials, and be clearly marked on each affected page, ''confidential materials excluded.'' Questions regarding filing or treatment of confidential responses to this inquiry should be directed to the Commission's Secretary, Karen V. Gregory, at the telephone number or email provided above.

Background

Published containerized freight rate indices have proliferated in the past several years. In chronological order of their initial year of publication, these include the China Containerized Freight Index (CCFI, 1998), Drewry Freight Insight Index (2006), Shanghai Containerized Freight Index (SCFI, 2009), Container Trade Statistics Index (CTS Index, 2009), the Transpacific Stabilization Agreement Index (TSA Index, 2011), and the Drewry-Cleartrade World Container Index (WCI, 2011). Each of these indices includes one or more U.S. trade routes, but most of them focus only on the U.S. import leg. The two exceptions are the CTS Index, which issues a lagged monthly index of U.S.-Europe rates benchmarked to 2008, and the WCI, which last year began providing coverage of container rates for freight shipped from Los Angeles to Shanghai and Rotterdam among the 11 route-specific indices it provides weekly. Most of these indices were developed in the wake of recent rate volatility in the major international liner shipping markets. In principle, the availability of credible rate benchmarks allows shippers and ocean carriers an opportunity to manage freight rate risk.

Last fall the Commission issued a proposed rule for freight index-based service contracts to provide flexibility and certainty to ocean carriers and their customers. The final rule went into effect in March and makes clear that service contracts can reference freight indices or other outside terms, so long as they are readily available to the contracting parties and the Commission.

Beginning this year, the Commission has received informal requests from several large U.S. agricultural shippers, intermediaries, and derivative brokers to consider issuing an index based on service contracts filed with the Commission because they have not found the available indices for U.S. export routes useful for the level of market intelligence they need, for adjusting rates in contracts, or for hedging freight rate risk. These large U.S. exporters, as well as the Agricultural Marketing Service at the U.S. Department of Agriculture (USDA), have expressed an interest in having access to reliable container freight rate indices that are specific to U.S. agricultural export commodities. They assert that the U.S. export market likely would be quick to adopt index-based contracting because many exporters already are accustomed to hedging risk exposure in the bulk shipping markets and because freight rates represent a much larger portion of the delivered value of their products, which means even quite small freight rate movements can have a large impact on the delivered value. These agricultural exporters also point out that they have excellent visibility into bulk shipping rates through the Baltic Dry Indexes, but have no similar visibility into container shipping rates for exports.

Some U.S. agricultural exporters have told Commission staff that a properly constructed index would help them increase exports by allowing them to use contracting and hedging strategies to increase the certainty of their transportation costs. These U.S. agricultural exporters have said that ocean carriers generally are reluctant to offer them service contract rates that are valid for more than 30 to 60 days, and that this inability to lock in a rate hinders their ability to sell agricultural exports for delivery more than 60 days into the future out of fear that changing transportation costs will make the sale uneconomic. Releasing an appropriately designed index could provide a market-based approach to this problem by allowing shippers to protect themselves through contracting and hedging strategies in private markets. U.S. agricultural exporters and derivative brokers also have told the Commission that the lack of a reliable container rate index for export grain shipments in particular disadvantages container shipping relative to bulk shipping because of the superior pricing transparency afforded by the Baltic Dry Indexes.

In response to the exporter requests, Commission staff inquired whether and why the indices currently published were not meeting U.S. shippers' exporting needs. These agricultural exporters raised concerns about the present export indices' transparency in the way the underlying data are collected. They also claimed there is poor correlation between the general rate trends represented in these indices and the actual rates U.S. exporters incur for the ocean transportation of specific agricultural products.

Other parties, on the other hand, have raised questions or concerns about the concept of the Commission sampling service contract data for commodity-specific freight rate indices. For example, they have asked: (1) Whether commodity-specific indices can be aggregated in a manner to protect confidential individual service contract rates; (2) whether release of such indices would further or contravene the purposes of the Shipping Act; (3) whether release of indices would benefit U.S. exporters or instead advantage their foreign competitors; (4) whether any benefits to exporters would be sufficient to justify the commitment of Commission resources to developing and releasing the indices; and (5) whether issuance of such indices is better left to private index publishers.

The Commission is interested in evaluating whether more targeted indices utilizing information in the service contracts filed with the Commission could materially assist U.S. agricultural exporters while furthering the Commission's governing statutes and the Administration's goal of promoting U.S. exports. One of the stated purposes of the Shipping Act is to ''promote the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace,'' 46 U.S.C. 40101(4) and, in January 2010, the President launched a National Export Initiative with the goal of doubling U.S. exports over the next five years. Later, on March 11, 2010, the President issued Executive Order No. 13534 and has directed the use of every available federal resource in support of that effort.

Following the requests from large agricultural exporters and others, Commission staff has conducted some initial testing of the technical feasibility of using service contract data filed with the Commission to develop a container rate index for a few targeted major U.S. export commodities such as grains, cotton, hay, and frozen meat, and has assessed the resource implications. To fully protect the identity of individual shippers and ocean carriers, data extracted from service contracts would be aggregated at an appropriate level prior to making public an average rate or index. The Commission wishes to stress that this concept is still in its formative stages and wants to hear the views of all parties before deciding whether or not to produce it.

The Current Inquiry

At this time, the Commission is seeking written comments and information from U.S. exporters, intermediaries, ocean carriers, and any other interested parties on whether it would be useful, advisable, and appropriate for the Commission to publish a few targeted export indices based on an aggregated sampling of service contract data. The Commission is particularly interested in: (a) Understanding whether and to what extent the shipping public would find U.S. export rate indices beneficial; (b) assessing whether it should extract rate information from service contracts or whether suitable alternatives exist; (c) determining the positive and negative

influences on the export commodities and ocean transportation marketplaces that greater price transparency via such indices might provide; and (d) gathering views on whether these indices, if developed, should be commodity-specific for different prescribed routes or whether more broadly based indices would meet the needs of U.S. exporters.

Questions

1. Is there anything that prevents private index developers and publishers from developing indices of the kind being sought by U.S. agricultural exporters?
2. Has your company used or considered using any existing freight rate index to adjust rates in its export service contracts or to hedge freight rate risk? If so, what is your company's view on the products it used or considered?
3. Would it be appropriate to use service contract data filed confidentially with the Commission to develop indices of the kind being sought by U.S. agricultural exporters (assuming the data is aggregated so as to protect the identity of individual shippers and ocean carriers before being released to the public in the form of an average rate or index)?
4. Should these indices be optimized for use in service contracts, for use in financial hedging instruments, or both?
5. What kind of competitive issues would the public release of a broadly based or route and commodity specific rate index create for U.S. export shippers or ocean carriers?
6. If developed using service contract data filed with the Commission, should a U.S. export rate index be route and commodity specific or should it be more broadly based? If the former type of rate index would be more useful to your business, explain what type of commodity, specific route, publication frequency, or other index-related factors are most needed.
7. Should either or both parties to a service contract have the option of not having their contract rates incorporated into an index?
8. If made available by the Commission, how would an export rate index affect your company's export sales?
9. If made available by the Commission, how likely is your company to use an export rate index in its service contracts to adjust rates?
10. Has your company or related subsidiary traded in freight derivatives? If so, describe that experience and the outcomes obtained?
11. If a U.S. export rate index is made available by the Commission, how likely is your company to trade in a derivatives market based on that index?
12. What impact would trading in a freight derivative market based on a U.S. export rate index have on the physical U.S. export container market?

Along with comments, respondents should provide their name, their title/position, contact information (e.g., telephone number and/or email address), name and address of company or other entity and type of company or entity (e.g., carrier, exporter, importer, trade association, index publisher, etc.).

Responses to the NOI will help the Commission decide whether it would be useful, advisable, and appropriate for the Commission to publish a few targeted export freight rate indices based on an aggregated sampling of service contract data filed with the Commission, and if so, what type of indices would best serve the needs of U.S. exporters.

To promote maximum participation, the NOI questions will be made available via the **Federal Register** and on the Commission's Web site at *www.fmc.gov* in a downloadable text file. They can also be obtained by contacting the Commission's Secretary, Karen V. Gregory, by telephone at (202) 523–5725 or by email at *secretary@fmc.gov.* Please indicate whether you would prefer a hard copy or an email copy of the NOI questions. Non-confidential comments may be sent to *secretary@fmc.gov* as an attachment to an email submission. Such attachments should be submitted preferably in Microsoft Word or PDF.

The Commission anticipates that most filed NOI comments will be made publicly available. The Commission believes that public availability of NOI comments is to be encouraged because it could improve public awareness of the benefits and drawbacks of establishing rate benchmarks for major U.S. exports. Nevertheless, some commenting parties may wish to include commercially sensitive information as relevant or necessary in their responses by way of explaining their liner shipping experiences or detailing their responses in practical terms. To help assure that all potential respondents will provide usefully detailed information in their submissions, the Commission will provide confidential treatment to the extent allowed by law for those submissions, or parts of submissions, for which the parties request confidentiality.

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–12666 Filed 5–23–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of April 24–25, 2012

In accordance with § 271.7(d) of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on April 24–15, 2012.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee seeks conditions in reserve markets consistent with federal funds trading in a range from 0 to ¼ percent. The Committee directs the Desk to continue the maturity extension program it began in September to purchase, by the end of June 2012, Treasury securities with remaining maturities of approximately 6 years to 30 years with a total face value of $400 billion, and to sell Treasury securities with remaining maturities of 3 years or less with a total face value of $400 billion. The Committee also directs the Desk to maintain its existing policies of rolling over maturing Treasury securities into new issues and of reinvesting principal payments on all agency debt and agency mortgage-backed securities in the System Open Market Account in agency mortgage-backed securities in order to maintain the total face value of domestic securities at approximately $2.6 trillion. The Committee directs the Desk to engage in dollar roll transactions as necessary to facilitate settlement of the Federal Reserve's agency MBS transactions. The System Open Market Account Manager and the Secretary will keep the Committee informed of ongoing developments regarding the System's balance sheet that could affect the attainment over time of the Committee's objectives of maximum employment and price stability.

[1] Copies of the Minutes of the Federal Open Market Committee at its meeting held on April 24–25, 2012, which includes the domestic policy directive issued at the meeting, are available on the Board's Web site, *www.federalreserve.gov.* The minutes are also published in the Federal Reserve Bulletin and in the Board's Annual Report.

By order of the Federal Open Market Committee, May 17, 2012.

William B. English,

Secretary, Federal Open Market Committee.

[FR Doc. 2012–12561 Filed 5–23–12; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0252; Docket 2012–0001; Sequence 6]

General Services Administration Acquisition Regulation; Submission for OMB Review; Preparation, Submission, and Negotiation of Subcontracting Plans

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding preparation, submission, and negotiation of subcontracting plans. A notice was published in the **Federal Register** 77 FR 9658, on February 17, 2012. No comments were received.

This information collection will ensure that small and small disadvantaged business concerns are afforded the maximum practicable opportunity to participate as subcontractors in construction, repair, and alteration or lease contracts. Preparation, submission, and negotiation of subcontracting plans requires for all negotiated solicitations having an anticipated award value over $650,000 ($1,500,000 for construction), submission of a subcontracting plan with other than small business concerns when a negotiated acquisition meets all four of the following conditions.

1. When the contracting officer anticipates receiving individual subcontracting plans (not commercial plans).

2. When the award is based on trade-offs among cost or price and technical and/or management factors under FAR 15.101–1.

3. The acquisition is not a commercial item acquisition.

4. The acquisition offers more than minimal subcontracting opportunities.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: June 25, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Rifkin, Procurement Analyst, General Services Acquisition Policy Division, GSA, (816) 823–2170 or email *Kathy.rifkin@gsa.gov.*

ADDRESSES: Submit comments identified by Information Collection 3090–0252, Preparation, Submission and Negotiation of Subcontracting Plans by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0252, Preparation, Submission and Negotiation of Subcontracting Plans''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0252, Preparation, Submission and Negotiation of Subcontracting Plans'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 3090–0252, Preparation, Submission and Negotiation of Subcontracting Plans.

Instructions: Please submit comments only and cite Information Collection 3090–0252, Preparation, Submission and Negotiation of Subcontracting Plans, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSAR provision at 552.219–72 requires a contractor (except small business concerns) to submit a subcontracting plan when a negotiated acquisition including construction, repair, and alterations and lease contracts (except those solicitations using simplified procedures) meets all four of the following conditions.

1. When the contracting officer anticipates receiving individual subcontracting plans (not commercial plans).

2. When award is based on trade-offs among cost or price and technical and/or management factors under FAR 15.101–1.

3. The acquisition is not a commercial item acquisition.

4. The acquisition offers more than minimal subcontracting opportunities.

B. Annual Reporting Burden

Respondents: 1,020.
Responses per Respondent: 1.
Hours per Response: 12.
Total Burden Hours: 12,240.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 3090–0252, Preparation, Submission, and Negotiation of Subcontracting Plans, in all correspondence.

Dated: May 15, 2012.

Joseph A. Neurauter,

Director, Office of Acquisition Policy, Senior Procurement Executive.

[FR Doc. 2012–12638 Filed 5–23–12; 8:45 am]

BILLING CODE 6820–61–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0286; Docket 2012–0001; Sequence 1]

General Services Administration Acquisition Regulation; Submission for OMB Review; GSA Mentor-Protégé Program

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a previously approved Information collection concerning the GSA Mentor-Protégé Program, General Service Administration Acquisition Manual (GSAM). A notice was published in the **Federal Register** at 77 FR 9659, on February 17, 2012. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our

estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before June 25, 2012.

ADDRESSES: Submit comments identified by Information Collection 3090–0286, GSA Mentor-Protégé Program by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0286, GSA Mentor-Protégé Program'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 3090–0286, GSA Mentor-Protégé Program.

Instructions: Please submit comments only and cite Information Collection 3090–0286, GSA Mentor-Protégé Program, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Rifkin, Procurement Analyst, General Services Acquisition Policy Division, GSA (816) 823–2170 or via email at *kathy.rifkin@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA Mentor-Protégé Program is designed to encourage GSA prime contractors to assist small businesses, small disadvantaged businesses, women-owned small businesses, veteran-owned small businesses, service-disabled veteran-owned small businesses, and HUBZone small businesses in enhancing their capabilities to perform GSA contracts and subcontracts, foster the establishment of long-term business relationships between these small business entities and GSA prime contractors, and increase the overall number of small business entities that receive GSA contract and subcontract awards.

B. Annual Reporting Burden

Respondents: 300.
Responses per Respondent: 4.
Annual Responses: 1200.
Hours per Response: 3.
Total Burden Hours: 3600.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 3090–0286, GSA Mentor-Protégé Program, in all correspondence.

Dated: May 15, 2012.

Joseph A. Neurauter,

Director, Office of Acquisition Policy & Senior Procurement Executive.

[FR Doc. 2012–12644 Filed 5–23–12; 8:45 am]

BILLING CODE 6820–61–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0287; Docket 2012–0001; Sequence 7]

Office of Facilities Management and Program Services; Information Collection; Background Investigations for Child Care Workers

AGENCY: Office of Facilities Management and Program Services, Public Building Service (PBS), U.S. General Services Administration (GSA).

ACTION: Notice of request for comments regarding an existing OMB information collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a previously approved information collection requirement regarding the collection of personal data for background investigations for child care workers accessing GSA owned and leased controlled facilities.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: July 23, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Reginald Johnson, Program Analyst, Building Security and Policy Division, GSA, by telephone at (202) 208–7909 or email at *Reginald.johnson@gsa.gov.*

ADDRESSES: Submit comments identified by Information Collection 3090–0287, Background Investigations for Child Care Workers by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0287, Background Investigations for Child Care Workers''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0287, Background Investigations for Child Care Workers'' on your attached document.
- *Fax:* 202–501–4067
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 3090–0287, Background Investigations for Child Care Workers.

Instructions: Please submit comments only and cite Information Collection 3090–0287, Background Investigations for Child Care Workers, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

SUPPLEMENTARY INFORMATION:

A. Purpose

Homeland Security Presidential Directive (HSPD) 12 ''Policy for a Common Identification Standard for Federal Employees and Contractors'' requires the implementation of a governmentwide standard for secure and reliable forms of identification for Federal employees and contractors. OMB's implementing instructions require all contract employees requiring routine access to federally controlled facilities for greater than six (6) months to receive a background investigation. The minimum background investigation is the National Agency Check with Written Inquiries or NACI.

However, there is no requirement in the law or HSPD–12 that requires child care employees to be subject to the NACI since employees of child care providers are neither government employees nor government contractors. Instead, the child care providers are

required to complete the criminal history background checks mandated in the Crime Control Act of 1990, Public Law 101–647, dated November 29, 1990, as amended by Public Law 102–190, dated December 5, 1991. These statutes require that each employee of a child care center located in a Federal building or in leased space must undergo a background check.

According to GSA policy, child care workers (as described above) will need to submit the following:

1. An original signed copy of a *Basic National Agency Check Criminal History,* GSA Form 176; and

2. Two sets of fingerprints on FBI Fingerprint Cards, for FD–258.

This is not a request to collect new information, this is a request to change the form that is currently being used to collect this information. The new GSA forms will be less of a public burden. This information is presently being collected on either the old Federal Protective Service 176 Form or the SF85P.

Please Note: The original request to review and approve the new information collection requirement regarding the collection of personal data for background check investigations was for both temporary contractors and child care workers accessing GSA owned and leased controlled facilities. However, through discussions with OMB a more streamlined will be developed for conducting background checks on temporary contractors. GSA is therefore pulling the request for review and approval of the collection of personal data for background check investigations of temporary contractors, form GSA 176T, presented in the **Federal Register** publication of February 17, 2009, 74 FR 7439. GSA is proceeding with the request for review and approval for background check investigations of child care workers, form GSA 176C—to be referred to as form GSA 176, HSPD–12, Background Check Investigations for Child Care Workers.

B. Annual Reporting Burden

Respondents: 3,060.
Responses per Respondent: 1.
Hours per Response: 1.
Total Burden Hours: 3,060.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite Background Investigations for Child Care Workers, in all correspondence.

Dated: May 14, 2012.

Casey Coleman,

Chief Information Officer.

[FR Doc. 2012–12645 Filed 5–23–12; 8:45 am]

BILLING CODE 6820–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors (BSC), National Center for Injury Prevention and Control (NCIPC)

The meeting announced below concerns Research Grants for Preventing Violence and Violence Related Injury (R01), Funding Opportunity Announcements (FOA) CE12–002, and Identifying Modifiable Protective Factors for Intimate Partner Violence or Sexual Violence Perpetration (R01), FOA CE12–003.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date:

11:00 a.m.–12:15 p.m., June 13, 2012 (Closed).

12:15 p.m.–1:00 p.m., June 13, 2012 (Open).

Place: Teleconference.

Status: A portion of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: Closed Session: The meeting will include the secondary review, discussion of competitive applications following initial review of applications received in response to FOA CE12–002; Research Grants for Preventing Violence and Violence Related Injury (R01) and CE12–003; and Identifying Modifiable Protective Factors for Intimate Partner Violence or Sexual Violence Perpetration (R01). Open Session: The meeting will include a science update, and a discussion on the pediatric traumatic brain injury workgroup.

Contact Person for More Information: Gwendolyn Haile Cattledge, Ph.D., M.S.E.H., F.A.C.E., Deputy Associate Director for Science, CDC, 4770 Buford Highway, Atlanta, Georgia 30341, Telephone: (404) 488–1430.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 18, 2012.

John Kastenbauer,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 2012–12661 Filed 5–23–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Member Conflict Review, Program Announcement (PA) 07–318, and Centers of Excellence to Promote a Healthier Workforce Supplement, Request for Applications (RFA) OH 11–001 initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 1:00 p.m.–3:00 p.m., June 28, 2012 (Closed).

Place: National Institute for Occupational Safety and Health (NIOSH), CDC, 1095 Willowdale Road, Morgantown, West Virginia 26506, Telephone: (304) 285–6143.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Member Conflict Review, PA 07–318'' and ''Centers of Excellence to Promote a Healthier Workforce Supplement, RFA OH 11–001.''

Contact Person for More Information: Bernadine Kuchinski, Ph.D., Scientific Review Administrator, Office of Extramural Programs, NIOSH, CDC, Robert A. Taft Laboratories, 4676 Columbia Parkway, MS C–7, Cincinnati, Ohio 45226, Telephone: (513) 533–8511.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: May 17, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–12675 Filed 5–23–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: FPLS Child Support Services Portal Registration (FCSSP).

OMB No.: 0970–0370.

Description: The purpose of the Federal Child Support Services Portal Registration is to collect information from an authorized individual registering to use the FPLS Child Support Services Portal. This information collection is necessary to authenticate the individual's identity and comply with the statutory requirement that OCSE establish and implement safeguards to restrict access to confidential information in the FPLS to authorized persons. 42 U.S.C. 653(m)(2).

After identity is authenticated, secure accounts will be created for authorized users to view data for their respective applications.

Respondents: Employers, Financial Institutions, Insurers, State Agencies, Local Access and Visitation Providers.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Registration Screens	588	1	0.10	58.8

Estimated Total Annual Burden Hours: 58.8.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–12601 Filed 5–23–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–1029]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; General Licensing Provisions; Section 351(k) Biosimilar Applications

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 June 25, 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–New and title ''General Licensing Provisions; Section 351(k) Biosimilar Applications''. Also include the FDA 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: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

General Licensing Provisions; Section 351(k) Biosimilar Applications—(OMB Control Number 0910—New)

On March 23, 2010, the President signed into law the Patient Protection and Affordable Care Act (Affordable Care Act) (Pub. L. 111–148). The Affordable Care Act contains a subtitle called the Biologics Price Competition and Innovation Act of 2009 (BPCI Act) which amends the Public Health Service Act (PHS Act) and establishes an abbreviated licensure pathway for biological products shown to be biosimilar to, or interchangeable with, an FDA-licensed biological reference product. (See sections 7001 through 7003 of the Affordable Care Act.)

Section 351(k) of the PHS Act (42 U.S.C. 262(k)), added by the BPCI Act,

sets forth the requirements for an application for a proposed biosimilar product and an application or a supplement for a proposed interchangeable product. Section 351(k) defines biosimilarity to mean ''that the biological product is highly similar to the reference product notwithstanding minor differences in clinically inactive components'' and that ''there are no clinically meaningful differences between the biological product and the reference product in terms of the safety, purity, and potency of the product''. (See section 351(i)(2) of the PHS Act.) A 351(k) application must contain, among other things, information demonstrating that the biological product is biosimilar to a reference product based upon data derived from analytical studies, animal studies, and clinical studies, unless FDA determines, in its discretion, that certain studies are unnecessary in a 351(k) application. (See section 351(k)(2) of the PHS Act.) To demonstrate interchangeability, an applicant must provide sufficient information to demonstrate biosimilarity and that the biosimilar biological product can be expected to produce the same clinical result as the reference product in any given patient and, if the biosimilar biological product is administered more than once to an individual, the risk in terms of safety or diminished efficacy of alternating or switching between the use of the biosimilar biological product and the reference product is not greater than the risk of using the reference product without such alternation or switch. (See section 351(k)(4) of the PHS Act.) Interchangeable products may be substituted for the reference product without the intervention of the prescribing health care provider. (See section 351(i)(3) of the PHS Act.) This **Federal Register** information collection document begins the process of requesting public comment and obtaining OMB approval for the information collection regarding the burden on the submission of a 351(k) application not otherwise covered by existing OMB approvals.

In estimating the information collection burden for 351(k) applications, FDA has reviewed the collection of information regarding the general licensing provisions for biologics license applications under section 351(a) of the PHS Act to OMB (approved under OMB control number 0910–0338). For the information collection burden for 351(a) applications, FDA described § 601.2(a) (21 CFR 601.2(a)) as requiring a manufacturer of a biological product to submit an application on forms prescribed for such purpose with accompanying data and information including certain labeling information to FDA for approval to market a product in interstate commerce. FDA also added in the burden estimate the container and package labeling requirements provided under §§ 610.60 through 610.65 (21 CFR 610.60 through 610.65). The estimated hours per response for § 601.2, and §§ 610.60 through 610.65, were 860 hours.

In addition, in submitting a 351(a) application, an applicant completes the Form FDA 356h ''Application to Market a New Drug, Biologic, or an Antibiotic Drug for Human Use.'' The application form serves primarily as a checklist for firms to gather and submit certain information to FDA. The checklist helps to ensure that the application is complete and contains all the necessary information, so that delays due to lack of information may be eliminated. The form provides key information to FDA for efficient handling and distribution to the appropriate staff for review. The estimated burden hours for biological product submissions using FDA Form 356h are included under the applicable requirements approved under OMB control number 0910–0338.

FDA intends for an applicant to submit a 351(k) application following Form FDA 356h, modifying the information submitted to support the information required under section 351(k) of the BPCI Act. To submit an application seeking licensure of a proposed biosimilar product under section 351(k)(2)(A)(i) and (k)(2)(A)(iii), FDA believes that the estimated burden hours would be approximately the same as noted under OMB control number 0910–0338 for a 351(a) application—860 hours. The burden estimates for seeking licensure of a proposed biosimilar product that meets the standards for interchangeability under section 351(k)(2)(B) and (k)(4) would also be 860 hours. Until we gain more experience with biosimilar applications, FDA believes this estimate is appropriate for 351(k) applications because to determine biosimilarity or interchangeability of a proposed 351(k) product, the application and the information submitted is expected to be comparably complex and technically demanding as a proposed 351(a) application. FDA may determine, in its discretion, that an element required under a 351(k) application to be unnecessary to support licensure of a biosimilar or interchangeable product. In those cases, the number of hours per response may be less than the hours estimated.

A summary of the collection of information requirements in the submission of a 351(k) application as described under the BPCI Act follows:

Section 351(k)(2)(A)(i) requires manufactures of 351(k) products to submit an application for FDA review and licensure before marketing a biosimilar product. An application submitted under this section shall include information demonstrating that:

- The biological product is biosimilar to a reference product based upon data derived from analytical studies, animal studies (including toxicity) and a clinical study or studies (including immunogenicity and pharmacokinetics or pharmacodynamics). The Secretary of Health and Human Services (the Secretary) may determine that any of these elements is unnecessary.
- The biological product and reference product utilize the same mechanism or mechanisms of action for the condition or conditions of use prescribed, recommended, or suggested in the proposed labeling, but only to the extent the mechanism or mechanisms of action are known for the reference product.
- The condition or conditions of use prescribed, recommended, or suggested in the labeling proposed for the biological product have been previously approved for the reference product.
- The route of administration, the dosage form, and the strength of the biological product are the same as those of the reference product.
- The facility in which the biological product is manufactured, processed, packed, or held meets standards designed to assure that the biological product continues to be safe, pure, and potent.

Section 351(k)(2)(A)(iii) requires the application to include publicly-available information regarding the Secretary's previous determination that the reference product is safe, pure, and potent. The application may include any additional information in support of the application, including publicly-available information with respect to the reference product or another biological product.

Under section 351(k)(2)(B) and (k)(4), a manufacturer may include information demonstrating that the biological product meets the standards for interchangeability either in the application described in this document to show biosimilarity, or in a supplement to such an application. The information submitted to meet the standard for interchangeability must show that: (1) The biological product is biosimilar to the reference product and can be expected to produce the same

clinical result as the reference product in any given patient and (2) for a biological product that is administered more than once to an individual, the risk in terms of safety or diminished efficacy of alternating or switching between use of the biological product and the reference product is not greater than the risk of using the reference product without such alternation or switch.

In addition to the collection of information regarding the submission of a 351(k) application for a proposed biosimilar or interchangeable biological product, section 351(l) of the BPCI Act establishes procedures for identifying and resolving patent disputes involving applications submitted under section 351(k) of the PHS Act. The burden estimates for the patent provisions under section 351(l)(6)(C) of the BPCI Act are included in table 1 of this document and are based on the estimated number of 351(k) biosimilar respondents. Based on similar reporting requirements, FDA estimates this notification will take 2 hours. A summary of the collection of information requirements under 351(l)(6)(C) follows:

Not later than 30 days after a complaint from the reference product sponsor is served to a 351(k) applicant in an action for patent infringement described under 351(l)(6), section 351(l)(6)(C) requires that the 351(k) applicant provide the Secretary with notice and a copy of such complaint. The Secretary shall publish in the **Federal Register** notice any complaint received under 351(l)(6)(C)(i).

FDA has not received any 351(k) applications to date. Under table 1 of this document, the estimated number of respondents submitting 351(k) applications is based on the estimated annual number of manufacturers that would submit the required information to FDA and the estimated annual number of 351(k) submissions FDA would receive. In making this estimate, FDA has taken into account, among other things, the expiration dates of patents that relate to potential reference products, and general market interest in biological products that could be candidates for 351(k) applications.

On November 2 and 3, 2010, FDA held a public hearing and established a public docket to obtain input on specific issues and challenges associated with the implementation of the BPCI Act. (See Docket No. FDA–2010–N–0477.) Based in part on this input, FDA announced the availability of three draft guidances describing FDA's current interpretation of certain statutory requirements added by the BPCI Act as well as quality and analytical issues, demonstrating biosimilarity, and implementation policy issues. These draft guidances are: ''Biosimilars: Questions and Answers Regarding Implementation of the Biologics Price Competition and Innovation Act of 2009,'' ''Quality Considerations in Demonstrating Biosimilarity to a Reference Protein Product,'' and ''Scientific Considerations in Demonstrating Biosimilarity to a Reference Product.'' The **Federal Register** documents for these guidances reference this **Federal Register** information collection document regarding the burden on the submission of a 351(k) application not otherwise covered by existing OMB approvals. In addition, we note that the draft guidance on ''Scientific Considerations in Demonstrating Biosimilarity to a Reference Product'' recommends that labeling for a product subject to approval under section 351(k) include statements that indicate that: (1) The product is approved as biosimilar to a reference product for stated indication(s) and (2) the product (has or has not) been determined to be interchangeable with the reference product. FDA has determined, under 5 CFR 1320.3(c)(2)), that these labeling recommendations are not ''collections of information'' for the purposes of the PRA because the statements will comprise solely information that FDA will supply to the applicant for the purpose of disclosing it to the public, i.e., FDA's determination upon review of the application submitted under section 351(k), that the product is biosimilar and/or interchangeable to its reference product.

In the **Federal Register** of February 15, 2012 (77 FR 8880), FDA published a 60-day notice requesting comments on the information collection for the requirements for an application for a proposed biosimilar product and an application or a supplement for a proposed interchangeable product. In the **Federal Register** of February 23, 2012 (77 FR 10752), FDA published a correction to the 60-day notice providing the correct docket number to submit comments. FDA received no comments that pertained to the information collection analysis.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

351(k) Application for Biosimilars (42 U.S.C. 262(k))	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
351(k)(2)(A)(i) and (k)(2)(A)(iii)	2	1	2	860	1720
351(k)(2)(B) and (k)(4)	1	1	1	860	860
351(l)(6)(C)	2	1	2	2	4

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

Dated: May 17, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–12591 Filed 5–23–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0477]

Agency Information Collection Activities; Proposed Collection; Comment Request; Investigational Device Exemptions Reports and Records

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, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on investigational device exemptions reports and records.

DATES: Submit either electronic or written comments on the collection of information by July 23, 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: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *daniel.gittleson@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, including each proposed extension of an existing 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.

Investigational Device Exemptions Reports and Records—21 CFR Part 812 (OMB Control Number 0910–0078)—Extension

Section 520(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(g)) establishes the statutory authority to collect information regarding investigational devices, and establishes rules under which new medical devices may be tested using human subjects in a clinical setting. The Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) added section 520(g)(6) to the FD&C Act and permitted changes to be made to either the investigational device or to the clinical protocol without FDA approval of an investigational device exemption (IDE) supplement. An IDE allows a device, which would otherwise be subject to provisions of the FD&C Act, such as premarket notification or premarket approval, to be used in investigations involving human subjects in which the safety and effectiveness of the device is being studied. The purpose of part 812 (21 CFR part 812) is to encourage, to the extent consistent with the protection of public health and safety and with ethical standards, the discovery and development of useful devices intended for human use. The IDE regulation is designed to encourage the development of useful medical devices and allow investigators the maximum freedom possible, without jeopardizing the health and safety of the public or violating ethical standards. To do this, the regulation provides for different levels of regulatory control depending on the level of potential risk the investigational device presents to human subjects. Investigations of significant risk devices, ones that present a potential for serious harm to the rights, safety, or welfare of human subjects, are subject to the full requirements of the IDE regulation. Nonsignificant risk device investigations, i.e., devices that do not present a potential for serious harm, are subject to the reduced burden of the abbreviated requirements. The regulation also includes provisions for treatment IDEs. The purpose of these provisions is to facilitate the availability, as early in the device development process as possible, of promising new devices to patients with life-threatening or serious conditions for which no comparable or satisfactory alternative therapy is available. Section 812.10 permits the sponsor of the IDE to request a waiver to all of the requirements of part 812. This information is needed for FDA to determine if waiver of the requirements of part 812 will impact the public's health and safety. Sections 812.20, 812.25, and 812.27 consist of the information necessary to file an IDE application with FDA. The submission of an IDE application to FDA is required only for significant risk device investigations.

Section 812.20 lists the data requirements for the original IDE application; § 812.25 lists the contents of the investigational plan; and § 812.27 lists the data relating to previous investigations or testing. The information in the original IDE application is evaluated by the Center for Devices and Radiological Health to determine whether the proposed investigation will reasonably protect the public health and safety, and for FDA to make a determination to approve the IDE.

Upon approval of an IDE application by FDA, a sponsor must submit certain requests and reports. Under § 812.35, a sponsor who wishes to make a change in the investigation that affects the scientific soundness of the study or the rights, safety, or welfare of the subjects, is required to submit a request for the change to FDA. Section 812.150 requires a sponsor to submit reports to FDA.

These requests and reports are submitted to FDA as supplemental applications. This information is needed for FDA to assure protection of human subjects and to allow review of the study's progress. Section 812.36(c) identifies the information necessary to file a treatment IDE application. FDA uses this information to determine if wider distribution of the device is in the interest of the public health. Section 812.36(f) identifies the reports required to allow FDA to monitor the size and scope of the treatment IDE, to assess the sponsor's due diligence in obtaining marketing clearance of the device and to ensure the integrity of the controlled clinical trials.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity/21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Waivers/812.10	1	1	1	1	1
IDE application/812.20, 812.25, and 812.27	356	1	356	80	28,480
Supplements/812.35 and 812.150	356	12	4,272	6	25,632
Treatment IDE applications/812.36(c)	1	1	1	120	120
Treatment IDE reporting/812.36(f)	1	1	1	20	20
Total					54,253

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

Section 812.140 lists the recordkeeping requirements for investigators and sponsors. FDA requires this information for tracking and oversight purposes. Investigators are required to maintain records, including correspondence and reports concerning the study, records of receipt, use or disposition of devices, records of each subject's case history and exposure to the device, informed consent documentation, study protocol, and documentation of any deviation from the protocol. Sponsors are required to maintain records including correspondence and reports concerning the study, records of shipment and disposition, signed investigator agreements, adverse device effects information, and, for a nonsignificant risk device study, an explanation of the nonsignificant risk determination, records of device name and intended use, study objectives, investigator information, investigational review board information, and statement on the extent that good manufacturing practices will be followed.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity/21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Original/812.140	356	1	356	10	3,560
Supplemental/812.140	356	12	4,272	1	4,272
Nonsignificant/812.140	356	1	356	6	2,136
Totals					9,968

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

For a nonsignificant risk device investigation, the investigator's and sponsor's recordkeeping and reporting burden is reduced. Pertinent records on the study must be maintained by both parties, and reports are made to sponsors and institutional review boards (IRBs). Reports are made to FDA only in certain circumstances, e.g., recall of the device, the occurrence of unanticipated adverse effects, and as a consequence of certain IRB actions.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity/21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Reports for Nonsignificant Risk Studies/812.150	1	1	1	6	6

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

The estimate of the burden is based on the number of IDEs received in the last 3 years.

Dated: May 17, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–12590 Filed 5–23–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0915]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Postmarketing Adverse Event Reporting for Nonprescription Human Drug Products Marketed Without an Approved Application

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 June 25, 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 0910–0636. Also include the FDA 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: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry on Postmarketing Adverse Event Reporting for Nonprescription

Human Drug Products Marketed Without an Approved Application (OMB Control Number 0910–0636)—Extension.

Respondents to this collection of information are manufacturers, packers, and distributors whose name (under section 502(b)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act)) appears on the label of a nonprescription drug marketed in the United States.

FDA is requesting public comment on estimates of annual submissions from these respondents, as required by Public Law 109–462 and described in the guidance. This guidance document discusses what should be included in a serious adverse drug event report submitted under section 760(b)(1) of the FD&C Act, including follow-up reports under 760(c)(2) of the FD&C Act, and how to submit these reports. The estimates for annual reporting burden and recordkeeping are based on FDA's knowledge of adverse drug experience reports historically submitted per year for prescription drug products and for nonprescription drug products marketed under an approved application, including knowledge about the time needed to prepare the reports and to maintain records.

FDA receives approximately 2,500 serious adverse event reports for nonprescription drug products marketed under approved applications, which comprise approximately 20 percent of the overall nonprescription drug market. Based on this experience, we estimate between 10,000 and 15,000 (i.e., 12,500) total annual responses for nonprescription drugs marketed without an approved application.

In the **Federal Register** of December 27, 2011 (76 FR 80946), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received no comments on the information collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Reports of serious adverse drug events (21 U.S.C. 379aa((b) and (c))	50	250	12,500	2	25,000
Total					25,000

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

Section 760(e) of the FD&C Act also requires that responsible persons maintain records of nonprescription adverse event reports, whether or not the event is serious, for a period of 6 years. The guidance recommends that responsible persons maintain records of efforts to obtain the minimum data elements for a report of a serious adverse drug event and any followup reports. Although the guidance does not provide recommendations on recordkeeping activities generally under section 760(e) of the FD&C Act, FDA is providing an estimate for the burden of this collection. Historically, serious adverse event reports comprise approximately two-thirds and nonserious adverse event reports comprise approximately one-third of the total number of postmarketing adverse event reports associated with drugs and biologic therapeutics (except vaccines) received by FDA. Based on this generalization, FDA estimates the total annual records to be approximately 20,000 records per year. FDA estimates that it takes 5 hours to maintain each record and the recordkeeping burden as follows:

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Recordkeeping (21 U.S.C. 379aa(e)(1))	200	100	20,000	5	100,000
Total					100,000

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

Therefore, the estimated annual reporting burden for this information is 25,000 hours and the estimated annual recordkeeping burden is 100,000 hours.

Dated: May 17, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–12589 Filed 5–23–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Risk Communication Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Risk Communication Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 29, 2012, from 8 a.m. to 3 p.m.

Location: FDA White Oak Campus, Building 31 Conference Center, Great Room, 10903 New Hampshire Ave., Silver Spring, MD 20993. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Lee L. Zwanziger, Risk Communication Staff, Office of Planning, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 3278, Silver Spring, MD 20993, 301–796–9151, FAX: 301–847–8611, email: *RCAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On June 29, 2011, the Committee will discuss recent research on communicating and understanding uncertainty, and risk perception and information seeking when facing multiple risks.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 21, 2012. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on June 29, 2012. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 18, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 19, 2012. Interested persons can also log on to *https://collaboration.fda.gov/rcac/* to hear and see the proceedings.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Lee L. Zwanziger at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 17, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–12587 Filed 5–23–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on July 25, 2012, from 8 a.m. to 12:30 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Minh Doan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *ODAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss and provide general advice on the extent to which, if any, the pre-surgical identification of clear cell carcinoma of the kidney using an imaging test provides useful clinical information.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before July 10, 2012. Oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11:30 a.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 29, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 2, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Minh Doan at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 17, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–12588 Filed 5–23–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Requirements for Importing Food and Drug Administration Regulated Products Into the United States

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following meeting: ''Requirements for Importing Food and Drug Administration Regulated Products Into the United States.'' The topics to be discussed are FDA regulations with respect to importing pharmaceutical products, medical devices, food products, as well as technology which applies to brokers and forwarders.

Date and Time: The meeting will be held on July 18, 2012, from 8:30 a.m. to 5 p.m. in Des Plaines, IL.

Location: The meeting will be held at the Illinois Department of Transportation Building, 9511 West Harrison St., Des Plaines, IL, 60016.

Contact: Lisa Misevicz, Food and Drug Administration, 550 West Jackson Blvd., suite 1500, Chicago, IL 60661; 312–596–4217; email: *lisa.misevicz@fda.hhs.gov*.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) to the contact person by July 2, 2012.

If you need special accommodations due to a disability, please contact Lisa Misevicz at least 7 days in advance.

Dated: May 17, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–12592 Filed 5–23–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Use of Computer Simulation of the United States Blood Supply in Support of Planning for Emergency Preparedness and Medical Countermeasures; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled: ''Use of Computer Simulation of the United States Blood Supply in Support of Planning for Emergency Preparedness and Medical Countermeasures.'' The purpose of this public workshop is to provide stakeholders a forum for discussion of data needs and to obtain feedback on possible modeling scenarios to explore emergency supply situations should a pandemic or epidemic disease or other events that could adversely impact the blood supply in the United States occur.

The public workshop will include presentations and panel discussions with experts from academia, regulated industry, government, and other stakeholders.

Date and Time: The public workshop will be held on July 24, 2012, from 8:30 a.m. to 5 p.m.

Location: The public workshop will be held at the Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Ave., Bethesda, MD 20814, 301–657–1234.

Contact Person: Mark Walderhaug, Center for Biologics Evaluation and Research (HFM–210), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–6028, email: *Mark.Walderhaug@fda.hhs.gov.*

Registration: Mail or email your registration information (including name, title, firm name, address, telephone, and fax numbers) to Mark Walderhaug (see *Contact Person*) by July 17, 2012. There is no registration fee for the public workshop. Early registration is recommended because seating is limited. Registration on the day of the public workshop will be provided on a space available basis beginning at 8 a.m.

If you need special accommodations due to a disability, please contact Mark Walderhaug (see *Contact Person*) at least 7 days in advance.

SUPPLEMENTARY INFORMATION: The public workshop presentations and panel discussions will: (1) Discuss

simulation modeling of the U.S. blood supply, including the possible application of an FDA computer simulation model of the U.S. blood supply in support of emergency preparedness and planning for potential disruptions in blood donations; (2) discuss with the blood community the utility of simulation methods as a complementary approach to support planning for daily inventory needs and forecasting for future blood donations and demand; (3) discuss the capabilities and limitations of the U.S. computer simulation model, assumptions used in the model and data gaps for model validation; (4) describe and prioritize future model enhancements to extend the model predictions from red blood cell units to other blood components, such as plasma and platelets; and (5) discuss the level of detail required for a model to characterize the U.S. blood supply and to develop possible scenarios in which shortages may be addressed through countermeasures such as the use of local and interregional transfers of blood and blood components.

Transcripts: Transcripts of the public workshop may be requested in writing from the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857, approximately 15 working days after the public workshop at a cost of 10 cents per page. A transcript of the public workshop will be available on the Internet at: *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/TranscriptsMinutes/default.htm.*

Dated: May 18, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–12593 Filed 5–23–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Web-Based Assessment of the Clinical Studies Support Center (CSSC)

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 12, 2011, Volume 77 No. 44, pages 14531–14533 and allowed 60-days for public comment. One comment was received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a current valid OMB control number.

Proposed Collection: Title: Web-Based Assessment of the Clinical Studies Support Center (CSSC). *Type of Information Collection Request:* New. *Need and Use of Information Collection:* Over the past decade Data Safety Monitoring Boards (DSMBs), Observational Safety Monitoring Boards (OSMBs), and Protocol Review Committees (PRCs) have become an important quality standard in clinical trials and research involving human subjects. The National Heart, Lung, and Blood Institute (NHLBI) alone currently has approximately 60 active review Committees. These include DSMBs, OSMBs, and PRCs which are independent groups convened to review study protocols developed under NHLBI funded Clinical Trial Networks. These committees are composed of members with expertise in biostatistics, clinical trials, bioethics, and other specific scientific and research areas. The NHLBI is charged with ensuring the highest quality of each Institute-funded clinical research project and compliance with Department of Health and Human Services (DHHS)/National Institutes of Health (NIH)/NHLBI regulations regarding human subject protections and safety monitoring. To carry out this responsibility, the NHLBI program staff instituted a new methodology for supporting the administration of NHLBI-appointed Committees in 2009. The new methodology included the establishment of the Clinical Studies Support Center (CSSC) under the direction of Westat, Inc. The CSSC is a pilot program to support the operations of NHLBI's DSMBs, Observational OSMBs, and PRCs for the Division of Blood Diseases and Resources. Utilizing Executive Secretaries to support each NHLBI safety monitoring board, the CSSC is responsible for documenting standardized operating procedures related to the administration of monitoring committees and the support center in a CSSC Manual of Operations and Procedures (MOP); coordinating meeting space and logistics for in-person meetings, Web conferences, and teleconferences; managing distribution of adverse event notifications to DSMB chairs and members, new protocols, and proposed amendments; and providing Executive Secretaries who provide scientific and administrative support to document board recommendations related to the safety and efficacy of trial interventions and the quality and completeness of clinical research study data. To move forward with full knowledge of current Committee operations and to monitor the effect of newly established procedures, Westat is required, as part of this contract, to conduct an assessment of the efficiency and effectiveness of NHLBI CSSC committee operations. As part of this assessment, the NHLBI requires feedback and advice regarding the support provided by the CSSC for monitoring board operations. To this end, a Web-based questionnaire will be administered to Chairs and members of monitoring boards to learn about their opinions about specific CSSC activities and their satisfaction with the performance of CSSC staff.

Frequency of Response: Once. *Affected Public:* Individuals. *Type of Respondents:* Monitoring board members. The annual reporting burden is a follows: *Estimated Number of Respondents:* 90; *Estimated Number of Responses per Respondent:* 1; *Average Burden of Hours per Response:* 0.33 and *Estimated Total Annual Burden Hours Requested:* 30.36. The annualized cost to respondents is estimated at: $ 3.036 (based on $100 per hour). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Table A.12.1. ESTIMATES OF HOUR BURDEN

Type of respondents	Number of respondents	Frequency of responses	Average time per response	Annual hour burden
D/OSMB Chairs	10	1	0.33	3.3
D/OSMB Members	78	1	0.33	25.74

Type of respondents	Number of respondents	Frequency of responses	Average time per response	Annual hour burden
Members in two D/OSMB	2	2	0.33	1.32
Total	90			30.36

TABLE 1–1 AND 1–2—ESTIMATE OF REQUESTED BURDEN HOURS AND DOLLAR VALUE OF BURDEN HOURS

Type of respondents	Number of respondents	Frequency of response	Average time per response	Hourly age rate	Respondent cost
Table A.12–2. ANNUALIZED COST TO RESPONDENTS					
DSMB Chairs	10	1	.33	100	330
DSMB Members	78	1	.33	100	2,574
Members in two D/OSMB	2	2	.33	100	132
Totals	90				3,036

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Erin Smith, Contracting Officer Technical Representative, Room 9149, 6701 Rockledge Drive, Bethesda, MD 20892–7950, or call 301–435–0050, or Email your request to *smithee@nhlbi.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: May 1, 2012.

Keith Hoots,

Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, NIH.

Dated: May 14, 2012.

Lynn Susulske,

NHLBI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2012–12656 Filed 5–23–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Collection of Customer Service, Demographic, and Smoking/Tobacco Use Information From the National Cancer Institute's Cancer Information Service (CIS) Clients (NCI)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Collection of Customer Service, Demographic, and Smoking/Tobacco Use Information from the National Cancer Institute's Cancer Information Service (CIS) Clients (NCI). *Type of Information Collection Request:* Revision of currently approved collection 0925–0208 (expiration 08/30/2012). *Need and Use of Information Collection:* The National Cancer Institute's Cancer Information Service (CIS) provides the latest information on cancer, clinical trials, and tobacco cessation in English and Spanish. Clients are served by calling 1–800–4–CANCER for cancer information; 1–877–44U–QUIT for smoking cessations services; using the NCI's LiveHelp, a web-based chat service; using NCI's Contact Us page on *www.cancer.gov*; and using NCI's Facebook page. CIS currently conducts a brief survey of a sample of telephone and LiveHelp clients at the end of usual service—a survey that includes three customer service and twelve demographic questions (age, sex, race, ethnicity, education, household income, number in household, and five questions about health care/coverage). Characterizing clients and how they found out about the CIS is essential to customer service, program planning, and promotion. The NCI also conducts a survey of individuals using the CIS's smoking cessation services—a survey that includes 20 smoking/tobacco use ''intake'' questions that serve as a needs assessment that addresses smoking history, previous quit attempts, and motivations to quit smoking. An additional question is used with callers who want to receive proactive call-back services. Responses to these questions enable Information Specialists to provide effective individualized counseling. The NCI's CIS also responds to cancer-related inquiries to its Facebook page and its Contact Us form on *www.cancer.gov* but does not collect customer service or demographic questions on these access channels. *Frequency of Response:* Once. *Affected Public:* Individuals or households. *Type of Respondents:* People with cancer; their relatives and friends; and general public, including smokers/tobacco users. Annualized estimates for numbers of respondents and respondent burden are presented in Table 1.

TABLE 1—ESTIMATE OF ANNUAL BURDEN HOURS

Type of respondents	Survey instrument	Number of respondents	Frequency of responses	Average time per response (minutes/hour)	Annual burden hours
Telephone Clients					
	Customer Service	67,400	1	1/60	1,123
	Demographic Questions	24,300	1	2/60	810
Smoking Cessation "Quitline" Clients					
Reactive Service Clients	Smoking Cessation "Intake" Questions.	4,200	1	5/60	350
	Demographic Questions	1,300	1	2/60	43
Proactive Callback Service Clients	Follow-Up	1,000	4	1/60	67
LiveHelp Clients [4]					
	Demographic questions	7,800	1	2/60	260
Total					2,653

The annual number of responses is estimated to be 109,000 and the annualized cost to the respondents is estimated at $93,185. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Mary Anne Bright, Associate Director, Office of Public Information and Resource Management, Office of Communications and Education, National Cancer Institute, 6116 Executive Blvd., Room 3023, MSC 8322, Bethesda, MD 20892–8322 or call 301–594–9048 or email your request, including your address, to: *brightma@mail.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: May 18, 2012.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2012–12654 Filed 5–23–12; 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: Bioengineering Sciences & Technologies Integrated Review Group; Gene and Drug Delivery Systems Study Section.

Date: June 20–21, 2012.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Wardman Park Washington DC Hotel, 2660 Woodley Road NW., Washington, DC 20008.

Contact Person: Amy L. Rubinstein, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7844, Bethesda, MD 20892, 301–408–9754, *rubinsteinal@csr.nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Bacterial Pathogenesis Study Section.

Date: June 20, 2012.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Richard G. Kostriken, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301–402–4454, *kostrikr@csr.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative and Clinical Endocrinology and Reproduction Study Section.

Date: June 20, 2012.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sax Chicago, 333 N. Dearborn, Chicago, IL 60654.

Contact Person: Dianne Hardy, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301–435–1154, *dianne.hardy@nih.gov*.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Urologic and Genitourinary Physiology and Pathology.

Date: June 20, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Avenue Hotel Chicago, 160 E. Huron Street, Chicago, IL 60611.

Contact Person: Ryan G. Morris, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Vector Biology Study Section.

Date: June 20–21, 2012.

Time: 8:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, 301–402–5671, *zhengli@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Prokaryotic Cell and Molecular Biology Study Section.

Date: June 20–21, 2012.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Michael K Schmidt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2214, MSC 7890, Bethesda, MD 20892, (301) 404–9958, *mschmidt@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PA12–017: Shared Instrumentation: Electron Microscopes.

Date: June 20, 2012.

Time: 10:00 a.m. to 10:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Wallace Ip, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, 301–435–1191. *ipws@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neuroimmunology, Multiple Sclerosis, Alzheimer's Disease, and Sleep Apnea and Restless Leg Syndrome.

Date: June 20, 2012.

Time: 11:00 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Samuel C. Edwards, Ph.D., IRG Chief, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Liver Pathobiology, Toxicology, and Pharmacology.

Date: June 20, 2012.

Time: 12:00 p.m. to 3:00 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: Peter J. Perrin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@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: May 18, 2012

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–12651 Filed 5–23–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: June 27–28, 2012.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: June 27, 2012—Drug User Fee Programs, Generic Cancer Drug Shortages: Continuing the Dialogue, The Role of the Cancer Advocacy Community; June 28, 2012—NCI Update.

Place: National Institutes of Health, Building 31, C Wing, 6th Floor, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Amy Bulman, Acting Director, Office of Advocacy Relations, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 10A30, Bethesda, MD 20892, 301–496–9723.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/dclg/dclg.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: May 18, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–12650 Filed 5–23–12; 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: Biobehavioral and Behavioral Processes Integrated Review Group; Language and Communication Study Section.

Date: June 18, 2012.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

Contact Person: Weijia Ni, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 237–9918, *niw@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Cognition and Perception Study Section.

Date: June 21–22, 2012.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

Contact Person: Dana Jeffrey Plude, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–2309, *pluded@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences, Integrated Review Group; Integrative Physiology of Obesity and Diabetes Study Section.

Date: June 21, 2012.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

Contact Person: Reed A Graves, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 402–6297, *gravesr@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Cellular, Molecular and Integrative Reproduction Study Section.

Date: June 21, 2012.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gary Hunnicutt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–0229, *gary.hunnicutt@nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Molecular and Cellular Endocrinology Study Section.

Date: June 21, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Houston Marriott at the Texas Medical Center, 6580 Fannin Street, Houston, TX 77030.

Contact Person: John Bleasdale, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170 MSC 7892, Bethesda, MD 20892, 301–435–4514, *bleasdaleje@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Sensory and Motor Neuroscience, Cognition and Perception.

Date: June 21–22, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Regis Washington DC, 923 16th and K Streets NW., Washington, DC 20006.

Contact Person: Yuan Luo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–827–7915, *luoy2@mail.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurogenesis and Cell Fate Study Section.

Date: June 21, 2012.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Joanne T. Fujii, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Brain Disorders in the Developing World Research Across the Lifespan.

Date: June 21, 2012.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Clinical and Integrative Cardiovascular Sciences Study Section.

Date: June 21–22, 2012.

Time: 8:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Delvin Knight, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 6194 MSC 4128, Bethesda, MD 20892–7814, 301–435–1850, *knightdr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Risk, Prevention and Health Behavior.

Date: June 21–22, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Claire E Gutkin, Ph.D., MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3106, MSC 7808, Bethesda, MD 20892, 301–594–3139, *gutkincl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–12–093 Biomedical and Behavioral Research Innovations to Ensure, Equity.

Date: June 21, 2012.

Time: 9:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel & Spa, 1600 King Street, Alexandria, VA 22314.

Contact Person: Delia Olufokunbi Sam, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0684, *olufokunbisamd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Epidemiology and Genetics of Cancer.

Date: June 21–22, 2012.

Time: 9:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Julia Krushkal, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, 301–435–1782, *krushkalj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Caries and Periodontal Disease.

Date: June 21, 2012.

Time: 1:00 p.m. to 3:00 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.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Retina and Developmental Biology.

Date: June 21, 2012.

Time: 12:00 p.m. to 3:00 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: Raya Mandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, 301–402–8228, *rayam@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: May 18, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–12648 Filed 5–23–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed 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 National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: June 14, 2012.

Open: 8:00 a.m. to 3:00 p.m.

Agenda: Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Center, Bethesda, MD 20892.

Closed: 3:00 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Center, Bethesda, MD 20892.

Contact Person: Lore Anne McNicol, Ph.D., Director, Division of Extramural Research, National Eye Institute, National Institutes of Health, 301–451–2020, *lam@nei.nih.gov.*

Any person interested may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nei.nih.gov,* where an agenda and any additional information will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: May 18, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–12683 Filed 5–23–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Network Infrastructure Support.

Date: June 7, 2012.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marina del Rey Hotel, 13534 Bali Way, Marina del Rey, CA 90292.

Contact Person: Bita Nakhai, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel; Member Conflict SEP.

Date: June 7, 2012.

Date: 1:00 p.m. to 3:00 p.m.

Date: To review and evaluate grant applications.

Place: Marina del Rey Hotel, 13534 Bali Way, Marina del Rey, CA 90292.

Contact Person: Ramesh Vemuri, Ph.D., Chief, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel; Advancing Diversity in Aging Research.

Date: June 7, 2012.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marina del Rey Hotel, 13534 Bali Way, Marina del Rey, CA 90292.

William Cruce, Ph.D., Scientific Review Officer, National Institute on Aging, Scientific Review Branch, Gateway Building 2C–212, 7201 Wisconsin Ave., Bethesda, MD 20814, 301–402–7704, *crucew@nia.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel; AD Registry.

Date: June 7, 2012.

Time: 12:30 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Marina Del Rey Hotel, 13534 Bali Way, Marina Del Rey, CA 90292.

Contact Person: Alicja L. Markowska, Ph.D., DSC, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel; Protein Homeostasis.

Date: June 28, 2012.

Time: 11:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elaine Lewis, Ph.D., Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 18, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–12669 Filed 5–23–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–589, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–589, Application for Asylum and for Withholding of Removal.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 19, 2012, at 77 FR 16047, allowing for a 60-day public comment period. USCIS did not receive comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 25, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8518 or via email at *uscisfrcomment@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via email at *oira_submission@omb.eop.gov.* When submitting comments by email, please make sure to add OMB Control Number 1615–0067 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning the extension of this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Asylum and for Witholding of Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–589. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* Form I–589 is necessary to determine whether an alien applying for asylum and/or withholding of removal in the United States is classified as a refugee, and is eligible to remain in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 46,000 responses at 12 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 552,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529, telephone number 202–272–1470.

Dated: May 17, 2012.

Laura Dawkins,

Acting Chief Regulatory Coordinator, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–12582 Filed 5–23–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L19100000–BJ0000–LRCME1R05172]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on June 25, 2012.

DATES: Protests of the survey must be filed before June 25, 2012 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009, *Marvin_Montoya@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Regional Director, Rocky Mountain Region, Bureau of Indian Affairs, and was necessary to determine the boundaries of Tribal Trust lands. The lands we surveyed are:

Principal Meridian, Montana

T. 26 N., R. 24 E.

The plat, in one sheet, representing the dependent resurvey of the south boundary of the Fort Belknap Indian Reservation, through Township 26 North, Range 24 East, Principal

Meridian, Montana, was accepted April 23, 2012.

We will place a copy of the plat, in one sheet, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in one sheet, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in one sheet, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

James D. Claflin,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2012–12653 Filed 5–23–12; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMF00000 L13110000.XH0000]

Notice of Public Meeting, Farmington District Resource Advisory Council Meeting, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Farmington District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting dates are June 13–14, 2012, at the Taos Field Office, 226 Cruz Alta Road, Taos, NM. A field trip is planned for June 13 at 8:30 a.m. The meeting is scheduled Thursday, June 14, from 9 a.m. to 4:30 p.m. The public comment period will begin at 3:30 p.m. The public may send written comments to the RAC at the above address. All RAC meetings are open to the public. Depending on the number of individuals wishing to comment and time available, the time for individual oral comments may be limited.

FOR FURTHER INFORMATION CONTACT: Bill Papich, coordinator for the BLM Farmington District RAC, at the BLM Farmington District Office, 6251 College Boulevard, Farmington, NM 87402, or phone Mr. Papich at 505–564–7620. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8229 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 10-member RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in New Mexico.

Planned agenda items include discussion of a proposed transportation plan for the Taos Field Office and a planned wild horse gathering by the Farmington Field Office. There also will be discussion of the Glade Run Recreation Area management plan amendment to the Farmington Field Office Resource Management Plan.

Felicia J. Probert,

Acting Associate State Director, New Mexico.

[FR Doc. 2012–12655 Filed 5–23–12; 8:45 am]

BILLING CODE 4310–VB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS00560.L58530000.ES0000; N–89341; 12–08807; MO# 4500030924; TAS: 14X5232]

Notice of Realty Action: Non-Competitive Direct Sale of Reversionary Interest Recreation and Public Purpose Act Patent, Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to offer one parcel of public land totaling approximately 5 acres in the Las Vegas Valley by non-competitive direct sale to the entity. The purpose of the direct sale is to dispose of certain reservations, conditions, and limitations contained in Patent No. 27–82–0020. The authority for the sale is Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA).

DATES: Interested parties may submit written comments to the BLM regarding the proposed sale on or before July 9, 2012.

ADDRESSES: Mail written comments to the BLM Field Manager, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130, or email to: *jpickren@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Jill Pickren, Realty Specialist, 702–515–5194. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The parcel proposed for sale is located north of Eastern Avenue and west of Channel 10 Drive in Las Vegas, Nevada. The following described land was patented to The Roman Catholic Bishop of Reno on August 6, 1982:

Mount Diablo Meridian

T. 21 S., R. 61 E.,

Sec. 23, lot 48.

The area described contains 5 acres, more or less, in Clark County.

This proposed non-competitive direct sale is in conformance with the BLM Las Vegas Resource Management Plan (RMP) and the Record of Decision (ROD) approved on October 5, 1998, as clarified by a Plan Maintenance Record (PMR–Las Vegas–2012–01) dated March 2, 2012.

The lands are being offered for sale using direct sale procedures pursuant to 43 CFR 2711.3–3. This parcel of public land is proposed for sale at no less than the appraised fair market value (FMV) of $435,000, dated May 26, 2011, as determined by the authorized officer. The appraisal report is available for public review at the BLM Las Vegas Field Office (LVFO) at the address above.

This parcel of public land may be sold under the FLPMA Section 203 where, as a result of land use planning required under the FLPMA Section 202, the Secretary determines that the sale of this parcel meets the following disposal criteria: (1) Such tract is difficult and uneconomic to manage because of its location or other characteristics—such as the subject's history of use, current level of development, and is not suitable for management by another Federal department or agency. The Roman Catholic Bishop of Las Vegas has asked to purchase the reversionary interest in the parcel in order to obtain a fee simple title for The Roman Catholic Bishop of Las Vegas to then sell the parcel without conditions of reversion. A Certificate of Amendment of the Articles of Incorporation was filed with Secretary of State of the State of Nevada on June 29, 1995, changing the name from The Roman Catholic Bishop of Reno to The Roman Catholic Bishop of Las Vegas. The Roman Catholic Bishop of Las Vegas requested to relinquish the parcel

due to maintenance, health and safety issues. The parcel requires continual and costly maintenance to remove brush and shrubs which facilitate unauthorized occupancy. The BLM does not wish to accept relinquishment of the parcel. The parcel is completely surrounded by private lands and would be difficult and uneconomic for the LVFO to manage. This parcel is identified as suitable for disposal in the BLM Las Vegas RMP and the ROD. The identified lands are not needed for any Federal purpose. The proposed disposal action is consistent with the objectives, goals, and decisions of the RMP and would be in the public interest. The public lands would be sold under the direct-sale method as described by 43 CFR 2711.3–3(a) and 43 CFR 2711.3–3(a)(2).

Under 43 CFR 2711.3–1 (c) and (d), a deposit of not less than 20 percent of the FMV must be submitted 30 days from the date of the sale offer by 4:30 p.m. Pacific Time at the LVFO. Payment must be made in the form of a cashier's check, certified check, U.S. postal money order, or bank draft, and made payable in U.S. dollars to the ''Department of the Interior—Bureau of Land Management.'' Personal or company checks will not be accepted. Upon receipt of the 20 percent bid deposit, the BLM will send the purchaser a sale offer letter with detailed information for full payment. Failure to meet conditions for this sale will void the sale and any monies received will be forfeited.

Pursuant to 43 CFR 2711.2, qualified conveyees must be (1) United States citizens 18 years of age or older; (2) A corporation subject to the laws of any State or of the United States; (3) An entity including, but not limited to, associations or partnerships capable of acquiring and owning real property, or interests therein, under the laws of the State of Nevada; or (4) A State, State instrumentality, or political subdivision authorized to hold real property. Failure to submit the above requested documents to the BLM within 30 days from receipt of the sale offer letter shall result in cancellation of the sale and forfeiture of the bid deposit.

No contractual, or other rights against the United States, may accrue until the BLM officially accepts the offer to purchase and the full purchase price is paid.

Upon conveyance of the reversionary interest, the identified parcel of public lands would no longer be subject to the reservations, conditions, and limitations in Patent No. 27–82–0020 (unless otherwise noted below). Rather, the following terms, conditions and reservations would apply, and will appear as reservations to the United States on the conveyance document for this parcel.

(1) All minerals for the parcel will be reserved in accordance with 43 CFR 2740.0–6 (c) and Patent No. 27–82–0020.

(2) A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945); and

(3) All mineral deposits in the land so patented are reserved to the United States, or persons authorized by the United States, along with the right to prospect for, mine, and remove such deposits from the same, as well as any necessary access or egress, under applicable law and regulations to be established by the Secretary of the Interior.

In addition, the conveyance will be subject to the following terms and conditions:

1. An easement 50 feet in width along the east boundary for road and public utilities purposes to ensure continued ingress and egress to adjacent lands;

2. An easement 30 feet in width along the west boundary for road and public utilities purposes to ensure continued ingress and egress to adjacent lands;

3. The parcel is subject to valid existing rights;

4. The parcel is subject to reservations for road, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' transportation plan; and

5. By accepting this patent, the patentee agrees to indemnify, defend and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee, its employees, agents, contractors, or lessees, or any third-party, arising out of, or in connection with, the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee, its employees, agents, contractors, or lessees, or third party arising out of or in connection with the use and/or occupancy of the patented real property resulting in: (a) Violations of Federal, State, and local laws and regulations applicable to the real property; (b) judgments, claims or demands of any kind assessed against the United States; (c) costs, expenses, damages of any kind incurred by the United States; (d) releases or threatened releases on, into or under land, property and other interests of the United States of solid or hazardous wastes and/or hazardous substances, as defined by Federal or State environmental laws; (e) other activities by which solid or hazardous substances or wastes, as defined by Federal and State environmental laws were generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or (f) natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the patented real property, and may be enforced by the United States in a court of competent jurisdiction.

Unless other satisfactory arrangements are approved in advance by a BLM authorized officer, conveyance of title shall be through the use of escrow. Designation of the escrow agent shall be through mutual agreement between the BLM and the prospective patentee, and costs of escrow shall be borne by the prospective patentee.

Requests for all escrow instructions must be received by the LVFO prior to 30 days before the prospective patentee's scheduled closing date. There are no exceptions.

No contractual or other rights against the United States may accrue until the BLM officially accepts the offer to purchase, and the full price is submitted by the 180th day following the sale.

All name changes and supporting documentation must be received at the LVFO 30 days from the date on the sale offer letter by 4:30 p.m., Pacific Time. Name changes will not be accepted after that date. To submit a name change, the purchaser must complete a Certificate of Eligibility in writing and submit it to the LVFO. Certificates of Eligibility are available at the LVFO and the BLM Web site at: *http://www.blm.gov/nv/st/en/snplma/Land_Auctions.html.*

The remainder of the full price for the parcel must be paid prior to the expiration of the 180th day following the BLM's acceptance of the 20 percent deposit. Payment must be submitted in the form of a certified check, U.S. postal money order, bank draft, or cashier's check made payable in U.S. dollars to the ''Department of the Interior—Bureau of Land Management.'' Personal or company checks will not be accepted.

Arrangements for electronic fund transfer to the BLM for payment of the balance due must be made a minimum of 2 weeks prior to the payment date. Failure to pay the full bid price prior to

the expiration of the 180th day will disqualify the purchaser and cause the entire 20 percent deposit to be forfeited to the BLM. Forfeiture of the 20 percent deposit is in accordance with 43 CFR 2711.3–1(d). No exceptions will be made. The BLM cannot accept the full price after the 180th day of the sale date.

The BLM will not sign any documents related to 1031 Exchange transactions. The timing for completion of the exchange is the bidder's responsibility in accordance with Internal Revenue Service's regulations. The BLM is not a party to any 1031 Exchange.

All sales are made in accordance with and subject to the governing provisions of law and applicable regulations.

In accordance with 43 CFR 2711.3–1(f), the BLM may accept or reject any or all offers to purchase, or withdraw any parcel of land or interest therein from sale, if, in the opinion of a BLM authorized officer, consummation of the sale would be inconsistent with any law, or for other reasons.

In order to determine the FMV, certain assumptions may have been made concerning the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this notice, the BLM advises that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable Federal, State, and local government laws, regulations, and policies that may affect the subject lands, including any required dedication of lands for public uses. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable laws, regulations, and policies of the applicable local government for proposed future uses. It will be the responsibility of the buyer to be aware through due diligence of those laws, regulations, and policies, and to seek any required local approvals for future uses. The buyer should also make themselves aware of any Federal or State law or regulation that may impact the future use of the property. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

A map delineating the individual proposed sale parcel is available for public review at the LVFO, which is located at the address above. The FMV for the sale parcel will be available for review 60 days prior to the sale date. Information concerning the sale, appraisal, reservations, procedures and conditions, Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), and other environmental documents will be available for review at the LVFO, or by calling 702–515–5194 and asking to speak to Jill Pickren, Realty Specialist. You may contact the LVFO from 7:30 a.m. to 4:30 p.m., Monday through Friday (except Federal holidays).

Only written comments will be considered properly filed.

Before including your address, phone number, email address, or other personal identifying information in your comment—you should be aware that your entire comment, including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Any adverse comments regarding the proposed sale will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Authority: 43 CFR 2711.1–2(d).

Vanessa L. Hice,

Assistant Field Manager, Division of Lands.

[FR Doc. 2012–12567 Filed 5–23–12; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMF02000 L16100000.DT0000 LXSS026G0000]

Notice of Availability of the Record of Decision for the Taos Resource Management Plan/Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD)/Approved Resource Management Plan (RMP) for the Taos Field Office located in northern New Mexico. The New Mexico State Director signed the ROD on May 24, 2012, which constitutes the final decision of the BLM and makes the Approved RMP effective immediately.

ADDRESSES: Copies of the ROD/Approved RMP are available upon request from the Field Manager, Taos Field Office, Bureau of Land Management, 226 Cruz Alta Road, Taos, New Mexico, or via the Internet at: *www.blm.gov/nm/taos.* Copies of the ROD/Approved RMP are available for public inspection at the BLM New Mexico State Office at 301 Dinosaur Trail, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: Brad Higdon, Planning and Environmental Coordinator, Taos Field Office, telephone 575–751–4725; address 226 Cruz Alta Road, Taos, New Mexico 87571; email *bhigdon@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Approved RMP provides broad-scale direction for the management of about 595,100 acres of BLM surface estate and 1.5 million acres of mineral estate administered by the BLM Taos Field Office within Colfax, Harding, Los Alamos, Mora, Rio Arriba, San Miguel, Santa Fe, Taos, and Union counties and is prepared in accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Lands Policy and Management Act of 1976, as amended. The Approved RMP, which replaces a land use plan completed in 1988, provides updated management decisions regarding land tenure adjustments, land use authorizations, mineral resources, recreation, renewable energy, special designations, transportation and access, wilderness characteristics, visual resources, and other resources and uses.

The Approved RMP was prepared in partnership with cooperating agencies, Ohkay Owingeh Pueblo, New Mexico Department of Game and Fish, and Santa Fe County, as well as in collaboration with multiple tribes, agencies, organizations, and other members of the public, largely through the public participation provided under NEPA. The Draft RMP/Environmental Impact Statement (EIS) was released for a 90-day public review and comment period on June 10, 2010, and identified Alternative A as the BLM's preferred alternative. Based on input received from cooperating agencies and the public, the preferred alternative was modified where appropriate and then

presented as the Proposed RMP in the Final EIS, released December 2, 2011, for a public protest period and a Governor's consistency review period.

The BLM received 27 letters protesting decisions contained in the Proposed RMP/Final EIS, including decisions regarding mining opportunities in the San Pedro Mountains and Ojo Caliente Area of Critical Environmental Concern (ACEC), management of the La Cienega ACEC, land tenure adjustment opportunities in El Palacio, travel management, and protective management of the Old Spanish National Historic Trail. While the Governor's consistency review provided input from the Governor that the BLM considered in its decision making, the review did not identify any specific inconsistency with State plans, policies, or programs. As a result of protests receive during the protest period, the BLM made one change to the Approved RMP by removing language which unnecessarily limited the designation of off-highway vehicle routes within the Santa Fe ACEC, described in detail in the ROD/Approved RMP. Editorial and formatting modifications were also made to the Approved RMP.

The ROD/Approved RMP does not contain implementation-level decisions that may be appealed under the provisions of 43 CFR part 4, subpart E. Rather, all decisions are considered planning-level decisions and were subject to protest under 43 CFR 1610.5–2 at the time the Proposed RMP/Final EIS was made available to the public.

Jesse J. Juen,

State Director.

Authority: 40 CFR 1506.6; 43 CFR 1610.2(g), 1610.5–1(b).

[FR Doc. 2012–12680 Filed 5–23–12; 8:45 am]

BILLING CODE 4310–OW–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ931000. L51010000. FX0000. LVRWA09A2370; AZA34425]

Notice of Segregation of Public Lands for the Proposed Hyder Valley Solar Energy Project in Maricopa County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to Bureau of Land Management (BLM) regulations, the BLM is segregating approximately 3,399.76 acres of public lands located in the State of Arizona from all forms of appropriation under the public land laws, including the Mining Law of 1872, but not the mineral leasing or mineral materials sales laws, for a period of up to 2 years. This is for the purpose of processing one solar energy right-of-way (ROW) application submitted by Pacific Solar Investments, LLC, to construct and operate the Hyder Valley Solar Energy Project in Maricopa County, Arizona.

DATES: Effective Date: This segregation is effective on May 24, 2012.

FOR FURTHER INFORMATION CONTACT: Eddie Arreola, Supervisory Project Manager; Telephone: 602–417–9505; Address: 1 North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427, or email: *earreola@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM is segregating the following described public lands located in the State of Arizona, subject to valid existing rights, from all forms of appropriation under the public land laws, including the Mining Law, but not the mineral leasing or the mineral materials sales laws.

Gila and Salt River Meridian, Arizona

T. 4 S., R. 9 W.,
Sec. 7;
Sec. 18, lots 1 to 4, inclusive, NE¼, E½NW¼, E½SW¼;
Sec. 19, lots 2 to 4, inclusive, S½NE¼, SE1/4NW¼, E1/2SW¼, SE¼;
Sec. 20, SW¼NW¼, W½SW¼, SE¼SW¼;
Sec. 29, NW¼, W½SW¼;
Sec. 30;
Sec. 31, lots 1 to 3, inclusive, NE¼, E½NW¼, NE¼SW¼, N½SE¼.
T. 4 S., R. 10 W.,
Sec. 13, NE¼, N½SE¼.

The areas described aggregate 3,399.76 acres, more or less, in Maricopa County. In order to process the ROW application filed on the above described lands, the BLM finds that it is necessary for the orderly administration of the public lands to segregate the lands included in the application under the authority contained in 43 CFR2091.3–1(e) and 43 CFR 2804.25(e) for a period of up to 2 years, subject to valid existing rights. This 2-year segregation period commences on May 24, 2012. The public lands involved in this closure will be segregated from all forms of appropriation under the public land laws, including the Mining Law, but not the mineral leasing or material sales laws. The BLM has determined that this segregation is necessary for the orderly administration of the public lands.

The segregation period will terminate and the lands will automatically reopen to all forms of appropriation under the public land laws, including the mining laws, when one of the following events occurs: (1) Upon the issuance of a decision by the BLM authorized officer granting, granting with modifications, or denying the application for a right-of-way; (2) Upon publication of a **Federal Register** notice of termination of the segregation; or (3) Without further administrative action at the end of the segregation provided for in this **Federal Register** notice initiating the segregation, whichever occurs first. The segregation is effective only for a period of up to 2 years, without the possibility of extension.

The lands to be segregated are identified in the legal description provided above.

Authority: 43 CFR 2091.3–1(e), 43 CFR 2804.25(e).

Raymond Suazo,

State Director.

[FR Doc. 2012–12569 Filed 5–23–12; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

Outer Continental Shelf, Central and Western Gulf of Mexico Planning Areas, Oil and Gas Lease Sales for Years 2012–2017 (Sales 229, 227, 233, 231, 238, 235, 246, 241, 248, and 247)

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Call for Information and Nominations; Clarification.

SUMMARY: On March 15, 2011, BOEM (formerly the Bureau of Ocean Energy Management, Regulation and Enforcement) published a notice in the **Federal Register** (76 FR 14040), entitled ''Call for Information and Nominations'' (the Call). Subsequently, on November 15, 2011, BOEM published a ''Call for Information and Nominations: Correction'' in the **Federal Register** (76 FR 70748) correcting the sale numbers that were identified in the Call. This document describes a revision to the description of the areas not available for leasing in the OCS. BOEM believes the previous descriptions of the areas excluded by the Gulf of Mexico Energy Security Act of 2006 (Pub. L. 109–432 December 20, 2006) could be confusing.

Consequently, Section 4.A. items 1 and 2 of the original call are to be revised by deleting the following:

1. Blocks that were previously included within the Eastern GOM Planning Area and are within 100 miles of the Florida coast; and

2. Blocks east of the Military Mission line (86 degrees, 41 minutes west longitude) under an existing moratorium until 2022, as a result of the Gulf of Mexico Energy Security Act of 2006 (December 20, 2006); and replacing them with:

1. Whole blocks and portions of blocks deferred by the Gulf of Mexico Energy Security Act of 2006.

Section 4.A. items 3 and 4 are also renumbered to 2 and 3 respectively to reflect this change.

DATES: This modification is effective immediately.

FOR FURTHER INFORMATION CONTACT: Mr. Carrol Williams, Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, telephone (504) 736–2803.

Dated: May 14, 2012.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2012–12664 Filed 5–23–12; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for bonding and insurance requirements for surface coal mining and reclamation operations under regulatory programs has been submitted to the Office of Management and Budget (OMB) for review and approval. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by June 25, 2012 in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer, by telefax at (202) 395–5806 or via email to *OIRA_Docket@omb.eop.gov.* Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203–SIB, Washington, DC 20240, by telefax to (202) 219–3276, or by email to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208–2783, or electronically at *jtrelease@osmre.gov.* You may also review this information collection request on the Internet by going to *http://www.reginfo.gov* (Information Collection Review, Currently Under Review, Agency is Department of the Interior, DOI–OSMRE).

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval for the collection of information contained in 30 CFR Part 800—Bonding and insurance requirements for surface coal mining and reclamation operations under regulatory programs. OSM is requesting a 3-year term of approval for each 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 number for this collection of information is 1029–0043 for 30 CFR 800.

As required under 5 CFR 1320.8(d), a Federal Register notice soliciting comments for this collection of information was published on March 2, 2012, (77 FR 12879). We received one comment for this information collection request. The commenter expressed concern that bond amounts are not adequate to cover the cost of reclamation if the operator should forfeit their bond, requiring taxpayers to fund reclamation. However, section 509 of SMCRA and 30 CFR Part 800 require that bonds be in an amount adequate to complete the reclamation plan in the event of bond forfeiture. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR Part 800—Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs.

OMB Control Number: 1029–0043.

Summary: The regulations at 30 CFR Part 800 primarily implement § 509 of the Surface Mining Control and Reclamation Act of 1977, which requires that persons planning to conduct surface coal mining operations first post a performance bond to guarantee fulfillment of all reclamation obligations under the approved permit. The regulations also establish bond release requirements and procedures consistent with § 519 of the Act, liability insurance requirements pursuant to § 507(f) of the Act, and procedures for bond forfeiture should the permittee default on reclamation obligations.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Surface coal mining and reclamation applicants and State regulatory authorities.

Total Annual Responses: 12,336.

Total Annual Burden Hours: 112,627 hours.

Total Annual Cost Burden: $1,510,214.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the addresses listed in **ADDRESSES**. Please refer to the appropriate OMB control number in all correspondence.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 8, 2012.

Andrew F. DeVito,

Chief, Division of Regulatory Support.

[FR Doc. 2012–12405 Filed 5–23–12; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–352]

Andean Trade Preference Act: Impact on the U.S. Economy and on Andean Drug Crop Eradication

AGENCY: United States International Trade Commission.

ACTION: Correction of notice of investigation.

SUMMARY: The Commission's notice published in the **Federal Register** on May 15, 2012 (77 FR 28620) contained an error that incorrectly identified ''September 30, 2010'' as the date for transmittal to Congress of the Commission report under investigation No. 332–352, *Andean Trade Preference Act: Impact on the U.S. Economy and on Andean Drug Crop Eradication,* under section 206 of the Andean Trade Preference Act (19 U.S.C. 3204). The correct date for transmittal of the Commission report to Congress is September 28, 2012.

Issued: May 17, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–12598 Filed 5–23–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–843]

Certain Electronic Devices Having a Retractable USB Connector; Institution of Investigation Pursuant to 19 U.S.C. 1337

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 April 18, 2012, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Anu IP LLC of Longview, Texas. 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 electronic devices having a retractable USB connector by reason of infringement of certain claims of U.S. Patent No. 6,979,210 (''the '210 patent'') and U.S. Patent No. 7,090,515 (''the '515 patent). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

The complainant requests 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 May 17, 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 electronic devices having a retractable USB connector that infringe one or more of claims 1–4, 7, and 8 of the '210 patent and claims 1–4, 7, and 8 of the '515 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 complainant is:

Anu IP LLC, 3301 W. Marshal Ave., Suite 303, Longview, TX 75604.

(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:

AIPTEK International, Inc., 19 Industry E Rd. 4, Hsinchu Science Park, Hsinchu, Taiwan.
Aluratek, Inc., 14831 Myford Rd. Ste A, Tustin, CA 92780.
Archos S.A., 12, rue Ampère, 91430 Igny, France.
Archos, Inc., 7951 E. Maplewood Ave. #260, Greenwood Village, CO 80111.
Bluestar Alliance LLC, 1370 Broadway, Ste 1107, New York, NY 10018.
Centon Electronics, Inc., 27412 Aliso Viejo Parkway, Aliso Viejo, CA 92656.
Coby Electronics Corporation, 1991 Marcus Ave., Lake Success, NY 11042.
Corsair Memory, Inc., 46221 Landing Parkway, Fremont, CA 94538.
Emtec Electronics, Inc., 7607 Green Meadows Dr., Lew Center, OH 43035.
General Imaging Company, 2411 W. 190th Street #550, Torrance California, 90504.
Huawei Technology Company, Ltd., Huawei Industrial Base, Shenzhen 518129, China.
Iriver, Inc., 39 Peters Canyon Road, Irvine, CA 92606.
JVC Kenwood Corporation, 3–12, Moriyacho, Kanagawa-ku, Yokohama-shi, Kanagawa 221–8528, Japan.
JVC Americas Corporation, 1700 Valley Road, Suite 1, Wayne, NJ 07470.
Latte Communications, Inc., 675 E. Brokaw Road, San Jose, CA 95112.
Lexar Media, Inc., 47300 Bayside Parkway, Fremont, CA 94538.
Maxell Corporation of America, Inc., 3 Garrett Mountain Plaza, 3rd Floor, Woodland Park, NJ 07424.
Hitachi Maxell, Ltd., 1–1–88, Ushitora, Ibaraki, Osaka 567–8567, Japan.
Office Depot, Inc., 6600 North Military Trail, Boca Raton, Florida 33496.
Olympus Corporation, Shinjuku Monolith, 3–1 Nishi-Shinjuku, 2-chome, Shinjuku-ku, Tokyo 163–0914, Japan.
Olympus Corporation of the Americas, 3500 Corporate Pkwy, Center Valley, PA 18034.
Option NV, Gaston Geenslaan 14, 3001 Leuven, Belgium.
Option, Inc., Morris Road 13010, Alpharetta, GA 30004.
Panasonic Corporation, 1006 Oaza Kadoma, Kadoma, Osaka 571–8501, Japan.
Panasonic Corporation North America, 1 Panasonic Way, Secaucus, NJ 07094.
Patriot Memory LLC, 47027 Benicia Street, Fremont, CA 94538.
Provantage LLC, 7249 Whipple Avenue NW., North Canton, OH 44720.

RITEK Corporation, No. 42, Kuan-Fu N. Road, Hsin-Chu Industrial Park, 30316, Taiwan.
Advanced Media, Inc. dba RITEK U.S.A., 1440 Bridgegate Drive, Suite 395, Diamond Bar, CA 91765.
Sakar International, Inc., 195 Carter Drive, Edison, NJ 08817.
Samsung Electronics Co., Ltd., 130–10, Seocho 2-dong, Seochu-gu, Seoul, Republic of Korea.
Samsung Electronics America, 105 Challenger Road, Ridgefield, NJ 07660.
Sanyo Electric Co., Ltd., 5–5, Keihan-Hondori 2-chome, Moriguchi City, Osaka 570–8677, Japan.
Sanyo North America Corporation, 2055 Sanyo Avenue, San Diego, CA 92154.
Silicon Power Computer and Comm., Inc., 7F, No. 106, Zhouzi St., Neihu Dist., Taipei City 114, Taiwan.
Silicon Power Computer and Comm. USA, Inc., 10455 Bandley Dr. #300, Cupertino, CA 95014.
Supersonic, Inc., 6555 Bandini Boulevard, Commerce, CA 90040.
Super Talent Technology Corporation, 2077 North Capitol Avenue, San Jose, CA 95132.
Toshiba Corporation, 1–1, Shibaura 1-chome, Minato-ku, Tokyo 105–8001, Japan.
Toshiba America, Inc., 1251 Avenue of the Americas, Ste. 4110, New York, NY 10020.
ViewSonic Corporation, 381 Brea Canyon Road, Walnut, CA 91789.
VOXX International Corporation, 180 Marcus Boulevard, Hauppauge, NY 11788.
Audiovox Accessories Corporation, 111 Congressional Boulevard, Carmel, IN 46032.
Yamaha Corporation, 10–1, Nakazawa-cho, Naka-ku, Hamamatsu, Shizuoka 430–8650, Japan.
Yamaha Corporation of America, 6600 Orangethorpe Avenue, Buena Park, CA 90620.

(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 respondent, 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 respondent.

Issued: May 17, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–12597 Filed 5–23–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on May 16, 2012 a proposed Consent Decree (''Decree'') in *United States* v. *C&S Wholesale Grocers, Inc.,* Civil Action No. 12–30091 was lodged with the United States District Court for the District of Massachusetts.

The Decree resolves claims of the United States against C&S Wholesale Grocers, Inc. under the Clean Air Act, 42 U.S.C. 7401–7671q, for injunctive relief and recovery of civil penalties in connection with the defendant's operation of cold storage warehouse in Hatfield, Massachusetts, which uses anhydrous ammonia as the refrigerant. The Decree requires the defendant to pay $126,700 in civil penalties; to purchase $10,405 in emergency response equipment for the Town of Hatfield; engage a third-party expert to audit the refrigeration system and recommend any necessary changes; and implement any changes recommended by the expert.

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. *C&S Wholesale Grocers, Inc.,* 90–11–2–09793.

During the public comment period, the Consent 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 Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy''(*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $16.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Ronald Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–12578 Filed 5–23–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Mechanical Stratigraphy and Natural Deformation in Eagle Ford Formation and Equivalent Boquillas Formation, South-Central and West Texas

Notice is hereby given that, on April 25, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on Mechanical Stratigraphy and Natural Deformation in Eagle Ford Formation and Equivalent Boquillas Formation, South-Central and West Texas (''Eagle Ford'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of

antitrust plaintiffs to actual damages under specified circumstances. Specifically, Pioneer Natural Resources Co., Irving, TX, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Eagle Ford intends to file additional written notifications disclosing all changes in membership.

On February 23, 2012, Eagle Ford filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 15, 2012 (77 FR 15395).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–12579 Filed 5–23–12; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Society of Mechanical Engineers

Notice is hereby given that, on April 27, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the American Society of Mechanical Engineers (''ASME'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, since December 1, 2011, ASME has published six new standards, initiated five new standards activities, withdrawn two standards, and revised the charter of three consensus committees within the general nature and scope of ASME's standards development activities, as specified in its original notification. More detail regarding these changes can be found at *www.asme.org.*

On September 15, 2004, ASME filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 13, 2004 (69 FR 60895).

The last notification was filed with the Department on December 6, 2011. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 23, 2011 (76 FR 80406).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–12581 Filed 5–23–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ODVA, Inc.

Notice is hereby given that, on April 20, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ODVA, Inc. (''ODVA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Denso Wave Incorporated, Aichi, JAPAN; Monode Pryor Traceability, LLC, Mentor, OH; B&B Electronics Manufacturing Company, Ottawa, IL; EN Technologies Inc., Gyeonggido, Republic of Korea; Invensys Eurotherm Ltd., Worthing, United Kingdom; ifm electronic GmbH, Essen, Germany; and Corvus Energy Ltd., Richmond, British Columbia, Canada, have been added as parties to this venture.

Also, Fluke Networks, Everett, WA; ifak system GmbH, Magdeburg, Germany; SPMC (Changzhou) Co. Ltd., Changzhou, People's Republic of China; GE Multilin, Markham, Ontario, Canada; and Kollmorgen, Radford, VA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODVA intends to file additional written notifications disclosing all changes in membership.

On June 21, 1995, ODVA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 15, 1996 (61 6039).

The last notification was filed with the Department on January 27, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on, February 16, 2012 (77 FR 9266).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–12580 Filed 5–23–12; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1591]

Draft Standards and Best Practices for Interaction Between Medical Examiner/Coroner and Organ and Tissue Procurement Organizations

AGENCY: National Institute of Justice, DOJ.

ACTION: Notice of extended comment period and request for comments.

SUMMARY: In an effort to obtain further comments from interested parties, the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, Scientific Working Group for Medicolegal Death Investigation has extended the deadline for comments on the draft document titled ''Organ and Tissue Procurement Committee Standards and Best Practices for Interaction Between Medical Examiner/Coroner Offices and Organ Tissue Procurement Organizations'' from May 12, 2012, to June 11, 2012. Notice of the availability of this document was published previously in the **Federal Register** at 77 FR 24573, on April 24, 2012, as OJP (NIJ) Docket No. 1589. The opportunity to provide comments on this document is open to coroner/medical examiner office representatives, law enforcement agencies, organizations, and all other stakeholders and interested parties. Those individuals wishing to obtain and provide comments on the draft document under consideration are directed to the following Web site: *http://www.swgmdi.org.*

DATES: Comments must be received on or before the extended deadline of June 11, 2012.

FOR FURTHER INFORMATION CONTACT: Patricia Kashtan, by telephone at 202–353–1856 [**Note:** this is not a toll-free

telephone number], or by email at *Patricia.Kashtan@usdoj.gov.*

John H. Laub,

Director, National Institute of Justice.

[FR Doc. 2012–12527 Filed 5–23–12; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meetings; Record of Vote of Meeting Closure; (Pub. L. 94–409) (5 U.S.C. 552b)

I, Isaac Fulwood, Chairman of the United States Parole Commission, was present at a meeting of the Commission on Thursday, May 17, 2012 at approximately 11:30 a.m.. The meeting was held at the Commission's office, 90 K Street NE., 3rd Floor, Washington, DC 20530. The purpose of the meeting was to discuss and decide three original jurisdiction petitions for reconsideration under 28 CFR 2.27. Three Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement describing the subject matter of the meeting and certification of the General Counsel that this meeting may be closed by votes of the Commissioners present were submitted to the Commissioners before the conduct of any other business. Upon motion duly made, seconded and carried, the following Commissioners voted that the meeting should be closed: Isaac Fulwood, Cranston J. Mitchell and Patricia Cushwa.

In witness whereof, I make this official record of the vote taken to close the meeting and authorize this record to be made available to the public.

Dated: May 21, 2012.

Isaac Fulwood,

Chairman, United States Parole Commission.

[FR Doc. 2012–12744 Filed 5–22–12; 11:15 am]

BILLING CODE 4410–31–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for Veterans' Retraining Assistance Program, Extension Without Changes

AGENCY: Employment and Training Administration (ETA), 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 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 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, ETA is soliciting comments concerning extension of approval for the collection of applicant data for the Veterans' Retraining Assistance Program (VRAP), which is part of the VOW to Hire Heroes Act of 2011 (Pub. L. 112–56). VRAP is a new training program for eligible veterans, funded by the Veterans' Administration. To determine eligibility, the Act directs ETA to collect the following information from veteran applicants: Age, employment status, status in a Federal or state job training program within 180 days of the application, and date of application.

This information collection follows an emergency review that was conducted in accordance with the Paperwork Reduction Act of 1995 and 5 CFR 1320.13. OMB approved the emergency request on April 11, 2012. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before July 23, 2012.

ADDRESSES: Submit written comments to Andrew Ridgeway, Office of Workforce Investment, Room S–4209, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–3536 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Fax: 202–693–3817. Email: *Ridgeway.Andrew@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

ETA seeks a regular extension of OMB's approval to collect individual applicant data for the Veterans Retraining Assistance Program (VRAP) as part of the VOW to Hire Heroes Act of 2011 (Pub. L. 112–56), enacted November 21, 2011. The Act directs the Department of Veterans Affairs (VA), in cooperation with the DOL, to pay for up to 12 months of a training program in a high demand occupation for unemployed eligible veterans. The program is to serve up to 45,000 veterans in Fiscal Year (FY) 2012, beginning July 1, 2012, and up to 54,000 veterans from October 1, 2012, through March 31, 2014.

The VRAP provides the benefit to veterans who fulfill the following eligibility criteria: As of date of application, is at least 35 years old and less than 60; discharged from active duty under conditions other than dishonorable; is unemployed as of date of application; is not eligible to receive other educational assistance from the VA; is not in receipt of compensation for a service-connected disability rated totally disabling by reason of unemployability; was not and is not enrolled in any Federal or state job training program within the previous 180 days; and, the application must be submitted not later than October 1, 2013.

The VA is responsible for determining the following eligibility criteria: Discharged from active duty under conditions other than dishonorable; is not eligible to receive other educational assistance from the VA; is not in receipt of compensation for a service-connected disability rated totally disabling by reason of unemployability. The VA will be collecting information required for their eligibility criteria through the ''Application for VA Educational Benefits'' (OMB Control Number 2900–0154, VA Form 22–1990). The DOL is required to determine whether each veteran applying for the program is between 35 and 60 years old, is unemployed as of the date of the application, has not and is not enrolled in a Federal or state job training program within 180 days of the application, and has applied for the program no later than October 1, 2013. The DOL is proposing to determine its eligibility requirements by collecting individual applicant data. The data will be linked to the VA's Veterans On-Line Application (VONAPP, VA Form 22–1990) to complete the application. The VA will transmit reports to the DOL about the completion status of the veterans, so that the DOL can make contact with the veteran to offer employment services.

II. Review Focus

The Department is particularly interested in comments which:

• 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

Type of Review: Extension Without Changes.

Title: Veterans' Retraining Assistance Program.

OMB Number: 1205–0491.

Affected Public: Veteran Program Applicants.

Form(s): Intake Application.

Total Annual Respondents: 100,000.

Annual Frequency: Once.

Total Annual Responses: 100,000.

Average Time per Response: Five (5) minutes.

Estimated Total Annual Burden Hours: 8,333.

Total Annual Burden Cost for Respondents: $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Dated: Signed in Washington, DC, on this 16th day of May, 2012.

Jane Oates,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2012–12624 Filed 5–23–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0030]

National Technical Systems, Inc.: Expiration of Recognition as a Nationally Recognized Testing Laboratory

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the expiration of recognition of National Technical Systems, Inc., as a Nationally Recognized Testing Laboratory.

DATES: The effective date of this notice is June 21, 2012.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

I. Notice of Expiration of Recognition

The Occupational Safety and Health Administration (OSHA) hereby provides public notice that the recognition of National Testing Services, Inc., (NTS) as a Nationally Recognized Testing Laboratory (NRTL) will expire on June 21, 2012. OSHA's current scope of recognition for NTS is available at the Web page: *https://www.osha.gov/dts/otpca/nrtl/nts.html.*

On December 10, 1998, OSHA published in the **Federal Register** a notice recognizing NTS as an NRTL, with recognition effective on the date of the notice (63 FR 68306). On June 21, 2007, OSHA renewed the recognition of NTS as an NRTL (see 72 FR 34320), which extended the recognition for a period of five years, to June 21, 2012 (see paragraph I.c.2 of Appendix A to 29 CFR 1910.7). The current address of the only NTS facility recognized by OSHA as an NRTL site is: National Technical Systems, Inc., 1146 Massachusetts Avenue, Boxborough, Massachusetts 01719.

II. General Background on the Expiration of Recognition

Appendix A to 29 CFR 1910.7 stipulates that a recognized NRTL may renew its recognition by filing a renewal request not less than nine months, or no more than one year, before the expiration date of its current recognition. On August 5, 2011, OSHA sent NTS a reminder indicating that OSHA's recognition of NTS as an NRTL would expire on June 21, 2012. However, NTS did not submit a renewal request within the requisite time period. Consequently, the recognition of NTS as an NRTL expires on June 21, 2012. As of that date, NTS is no longer an NRTL, and OSHA no longer accepts the certifications of products by NTS for purposes of OSHA's NRTL-approval requirements. OSHA is publishing this **Federal Register** notice to make the public aware of the expiration.

III. Acceptability of Product Certifications by Former NRTLs

When an organization is no longer part of the NRTL Program, OSHA cannot accept the organization's NRTL-related product certifications if these certifications occur on or after the date OSHA terminated the organization's NRTL recognition. The following examples describe actions that occur on or after the date that OSHA terminated such an organization's NRTL recognition that would, for purposes of the NRTL Program, constitute invalid product certifications by that organization:

1. Authorizing manufacturers to use its mark by imprinting the terminated NRTL's mark on labels or on products;

2. Authorizing manufactures to use or apply labels containing the terminated NRTL's mark;

3. Issuing labels containing the terminated NRTL's mark to manufacturers; or

4. Manufacturers applying the terminated NRTL's mark or labels containing this mark to products.

For products to remain NRTL certified after the date OSHA terminated the organization's NRTL recognition, the manufacturer must find another NRTL organization that will assume responsibility for certifying the affected product(s); these types of product(s) must fall within that NRTL organization's scope of recognition. If another NRTL organization does not assume responsibility for certifying the product(s), then the terminated NRTL's product certifications are valid only under the following, limited, conditions:

1. The product(s) must be identical to the product model(s) that the terminated NRTL authorized for certification when it was part of the NRTL Program; and

2. The manufacturer must affix the terminated NRTL's mark to the product(s) only prior to the effective date of termination (not on or after that date), or, if the NRTL withdrew its certification of the product(s) at an earlier date, then the manufacturer must manufacture the product(s) and affix the NRTL's mark to the product(s) no later than this earlier date.

IV. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to Section 8(g)(2) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 657(g)(2)),

Secretary of Labor's Order No. 1–2012 (77 FR 3912), and 29 CFR 1910.7.

Signed at Washington, DC, on May 21, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2012–12632 Filed 5–23–12; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by June 25, 2012. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Polly A. Penhale at the above address or (703) 292–7420.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

Permit Application: 2013–005

1. *Applicant:* Jean Pennycook, 6135 N. College Avenue, Fresno, CA 93704.

Activity for Which Permit Is Requested

Take, Enter Antarctic Specially Protected Areas (ASPA's), and Import into the U.S.A. The applicant plans to salvage up to 25 various samples of Adelie penguins (bird parts, feathers, bones, skulls, and shells) and up to 15 of South Polar Skua each year. Samples will be collected from the penguin rookeries located at Beaufort Island (ASPA 105), Cape Royds (ASPA 121), and Cape Crozier (ASPA 124). The samples will be imported into the U.S.A. for education outreach activities. Samples will be deposited with museums, schools, zoos, and aquariums.

Location

Ross Island vicinity, Beaufort Island (ASPA 105), Cape Royds (ASPA 121), and Cape Crozier (ASPA 124).

Dates

October 1, 2012 to February 28, 2015.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 2012–12525 Filed 5–23–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Cyberinfrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Cyberinfrastructure (25150).

Date and Time: June 5, 2012, 10:00 a.m.–3:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Rm 1295, Arlington, VA 22230m, Virtual Meeting.

Type of Meeting: Open.

Contact Person: Kristen Oberright, Office of Cyberinfrastructure (OD/OCI), National Science Foundation, 4201 Wilson Blvd., Suite 1145, Arlington, VA 22230, Telephone: 703–292–8970.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CI community. To provide advice to the Director/NSF on issues related to long-range planning.

Agenda: Discussion of Cyberinfrastructure Framework for 21st Century Science and Engineering (CIF21) programs and planning and update on OCI activities.

Dated: May 21, 2012.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2012–12609 Filed 5–23–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On April 20, 2012, the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on May 21, 2012 to: Paul Morin; Permit No. 2013–002.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2012–12616 Filed 5–23–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Radiation Protection and Nuclear Materials; Notice of Meeting

The ACRS Subcommittee on Radiation Protection and Nuclear Materials will hold a meeting on June 5, 2012, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, June 5, 2012—1:00 p.m. Until 5:00 p.m.

The Subcommittee will review the technical basis for regulating extended storage and transportation of spent fuel. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The

Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christopher Brown (Telephone 301–415–7111 or Email: *Christopher.Brown@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (76 FR 64127–64128).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (240–888–9835) to be escorted to the meeting room.

Dated: May 18, 2012.

Cayetano Santos,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2012–12611 Filed 5–23–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on June 5, 2012, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b (c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, June 5, 2012—11:00 a.m. Until 12:00 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Antonio Dias (Telephone 301–415–6805 or Email: *Antonio.Dias@nrc.gov*) five days prior to the meeting, if possible, so that arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (76 FR 64126–64127).

Information regarding changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the DFO if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (240–888–9835) to be escorted to the meeting room.

Dated: May 17, 2012.

Cayetano Santos,

Chief, Reactor Safety Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2012–12614 Filed 5–23–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0115; IA–11–036]

Order Prohibiting Involvement in NRC–Licensed Activities; In the Matter of Jaime Sánchez

I

Jaime Sánchez (Mr. Sánchez) is President of S&R Engineering (S&R, licensee) in San Juan, Puerto Rico. S&R held License No. 52–30913–01 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 30 on June 21, 2004. The license authorized the possession, storage, and use of licensed nuclear material in portable gauges to measure the physical properties of materials in accordance with the conditions specified therein. On October 29, 2009, the NRC issued an Order to S&R due to S&R's failure to pay its license fees. The Order prohibited S&R from using its licensed radioactive material (one portable moisture density gauge containing a cesium-137 sealed source and an americium-241 sealed source), and indicated that if S&R failed to pay the fee within the required 30 days, S&R was required to dispose of or transfer the gauge to an authorized recipient within 60 days (by December 29, 2009) and to notify the NRC in writing of the disposition of the gauge. S&R did not pay the license fee, and did not notify the NRC that it had dispositioned the gauge.

II

In a letter dated August 1, 2011, the NRC provided to Mr. Sánchez the results of an investigation initiated by the NRC's Office of Investigations (OI). The letter informed Mr. Sánchez that

the NRC was considering escalated enforcement action against him for an apparent violation of 10 CFR 30.10(a)(2), due to his deliberate submittal to the NRC of information that he knew to be incomplete or inaccurate in some respect material to the NRC during a telephone conversation on August 3, 2010. Specifically, the NRC determined that during the telephone call, Mr. Sánchez deliberately informed an NRC inspector that S&R had transferred its gauge to an authorized recipient when, in fact, S&R remained in possession of the gauge.

In a separate letter dated August 1, 2011, the NRC informed Mr. Sánchez that the NRC was also considering escalated enforcement action against his company (S&R) for violations of NRC requirements including: (1) Providing information to the NRC that is not complete and accurate in all material respects as required by 10 CFR 30.9(a); (2) failing to comply with or respond to an NRC Order as required by 10 CFR 2.202(b) regarding either payment of the licensing fee or properly disposing of or transferring the gauge; (3) failing to afford the NRC the opportunity to inspect materials, activities, and records under the regulations as required by 10 CFR 19.14(a); and (4) failing to use a minimum of two independent controls that form tangible barriers to secure S&R's portable gauge from unauthorized removal, when the portable gauge was not under S&R's direct control and constant surveillance, as required by 10 CFR 30.34(i).

In those letters, the NRC offered S&R and Mr. Sánchez a choice to attend a Pre-decisional Enforcement Conference (PEC) or to request Alternative Dispute Resolution (ADR) to resolve any disagreement over: (1) Whether the violations occurred; and (2) the appropriate enforcement action. However, Mr. Sánchez did not respond to either letter or to the NRC staff's subsequent communication attempts.

III

Consequently, on January 13, 2012, the NRC issued to S&R a Notice of Violation and Proposed Imposition of Civil Penalty (CP) in the amount of $14,000, and notification that the NRC would potentially impose additional daily CPs if S&R did not transfer the gauge to an authorized recipient within 30 days from the date of the letter. In that letter, the NRC also informed S&R that the NRC would forgo imposition of any CPs if S&R appropriately transferred its portable gauge to an authorized recipient within 30 days from the date of the letter. The NRC has verified that S&R appropriately transferred the gauge to Earth Engineers, Inc. within the required timeframe. Accordingly, on the date of this Order, the NRC informed S&R that the NRC would not impose any CPs in association with the violations attributed to the company, and that S&R's NRC license has been terminated.

Separately, the NRC has concluded that Mr. Sánchez violated 10 CFR 30.10(a)(2) by deliberately submitting to the NRC information that he knew to be inaccurate in some respect material to the NRC, when, during the aforementioned telephone conversation on August 3, 2010, Mr. Sánchez deliberately informed an NRC inspector that S&R had transferred its gauge to an authorized recipient when, in fact, S&R remained in possession of the gauge. Mr. Sánchez's actions resulted in the NRC being uninformed as to the location of licensed material and, for a time, being precluded from inspecting the safe use and storage of that material. Mr. Sánchez's misrepresentation to the NRC (particularly, given his position as the President of S&R Engineering), and his failure to address or correct the misinformation, have raised serious doubts as to whether he can be relied upon to comply with the NRC requirements and to provide complete and accurate information to the NRC.

As a result, I do not have the necessary assurance that: Mr. Sánchez, should he engage in NRC-licensed activities under any other NRC license, would perform NRC-licensed activities safely and in accordance with the NRC requirements; and that the health and safety of the public will be protected if Mr. Sánchez were permitted at this time to be involved in NRC-licensed activities.

Therefore, the public health, safety, and interest require that Mr. Sánchez be prohibited from any involvement in NRC-licensed activities for a period of 5 years from the date of this Order.

IV

Accordingly, pursuant to Sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR 2.202, and 10 CFR 30.10, *it is hereby ordered that:*

1. Jaime Sánchez is prohibited for 5 years from the date of this Order from engaging in any NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Jaime Sánchez is currently involved with another licensee in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address, and telephone number of the employer, and provide a copy of this order to the employer.

3. Jaime Sánchez shall, within 20 days following acceptance of his first employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. In the notification, Jaime Sánchez shall include a statement of his commitment to comply with the NRC's regulatory requirements and why the Commission should have confidence that he will now comply with applicable NRC requirements, and be complete and accurate in all communications with the NRC.

The Director, OE, may relax or rescind any of the above conditions upon demonstration by Jaime Sánchez of good cause.

V

In accordance with 10 CFR 2.202, Mr. Sánchez must, and any other person adversely affected by this Order may, submit an answer to this Order within 30 days of its publication in the **Federal Register**. In addition, Mr. Sánchez and any other person adversely affected by this Order may request a hearing on this Order within 30 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

All documents filed in the NRC adjudicatory proceedings, including a request for a hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not

submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital certificate). Based on this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a web browser plug-in from the NRC's Web site. Further information on the web-based submission form, including the installation of the web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for a hearing or petition for leave to intervene. Submissions should be in portable document format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contracting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc/gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an extension request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party using E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is available to the public at *http://ehd1.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submissions.

If a person other than Mr. Sánchez requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

If a hearing is requested by a licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 30 days from the date this Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated at Rockville, MD, this 17th day of May 2012.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Director, Office of Enforcement.

[FR Doc. 2012–12621 Filed 5–23–12; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Tuesday, May 22, 2012 at 4:30 p.m.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions as set forth in 5 U.S.C. 552b(c)(2), (4), (6) and (8) and 17 CFR 200.402(a)(2), (4), (6) and (8) permit consideration of the scheduled matters at the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session, and determined that no earlier notice thereof was possible.

The subject matters of the Closed Meeting on May 22 will be examinations of financial institutions and a personnel matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: May 22, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–12795 Filed 5–22–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67018; File No. SR–OCC–2012–03]

Self-Regulatory Organizations; the Options Clearing Corporation; Order Approving Proposed Rule Change to More Closely Align OCC's By-Laws and Rules With Regulatory Requirements Related to ''Statutory Disqualifications''

May 18, 2012.

I. Introduction

On March 15, 2012, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2012–03 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] The proposed rule change was published for comment in the **Federal Register** on April 4, 2012.[2] On May 15, 2012, OCC filed an amendment to the proposed rule change.[3]The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change will more closely align OCC's By-Laws and Rules with applicable regulatory requirements related to ''statutory disqualifications'' under the Act in order to reduce the overall administrative burden on OCC associated with addressing the statutory disqualification of OCC clearing members (''Clearing Members'') and applicants for clearing membership (''Applicants'') and will provide guidance to Clearing Members and Applicants as to OCC's policies with respect to statutory disqualifications. The proposed rule change will amend OCC's ''Fitness Standards for Directors, Clearing Members and Others'' (''Fitness Standards'') to bring such standards into conformity with the proposed amendments to OCC's By-Laws. The Fitness Standards were submitted to the Commission in proposed rule change SR–OCC–2011–12 and were approved by the Commission on October 27, 2011.4

A. Background

Persons who have engaged in certain types of misconduct are subject to ''statutory disqualification,'' as defined by Section 3(a)(39) of the Act, and must undergo a review by the Commission under Rule 19h–1 of the Act in order to enter or continue in membership in a self-regulatory organization (''SRO''). Section 17A(b)(4)(A) of the Act provides that a registered clearing agency may and in cases in which the Commission so orders must deny participation to any person subject to a statutory disqualification. This provision further requires a registered clearing agency to provide the Commission with 30-days' notice before admitting a statutorily disqualified person to clearing membership. Rule 19h–1 of the Act implements these statutory provisions by requiring notice to the Commission if a registered clearing agency proposes either to admit to membership or to continue as a member a person subject to a statutory disqualification. Notably, unlike in the case of a national securities exchange or registered securities association, the rule does not require a registered clearing agency to file such a notice with respect to statutory disqualifications of associated persons of a Clearing Member or Applicant. A registered clearing agency is required to file such a notice only when the Clearing Member or Applicant itself is subject to the disqualification.

Article V of OCC's By-Laws establishes the qualifications required of Clearing Members and sets forth the procedures for admitting persons to clearing membership, including those that are or become subject to a statutory disqualification. Currently, Interpretation and Policy .03 of Article V, Section 1 of OCC's By-Laws provides that the Membership/Risk Committee (''Committee'') will not recommend the approval of an application for membership if the Applicant or an associated person is subject to a statutory disqualification unless the Committee makes a finding that ''special circumstances'' exist warranting a waiver of the statutory disqualification. The requirements of this By-Law are more stringent than those applied to registered clearing agencies by the Act or Commission rules because they require the Committee to (i) make specific findings of ''special circumstances'' before recommending membership approval and (ii) address statutory disqualifications of associated persons. The By-Laws therefore impose additional administrative burdens on OCC that are not required under any statute or rule administered by the Commission.

Neither Article V of the By-Laws nor OCC's Rules currently contain procedures for notice to OCC that an Applicant or Clearing Member is subject to a statutory disqualification, which provides insufficient guidance to Applicants and Clearing Members and exposes OCC to the risk that such notice may be given on a delayed basis. OCC's By-Laws and Rules are also silent as to the procedures to be followed by a Clearing Member when it becomes subject to a statutory disqualification even though Rule 19h–1 requires a registered clearing agency to file a notice if it intends to permit such a firm to remain a Clearing Member.

As a registered derivatives clearing organization (''DCO''), OCC is also subject to the jurisdiction of the Commodity Futures Trading Commission (''CFTC''). OCC's By-Laws also address statutory disqualification

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 34–66676 (March 29, 2012), 77 FR 20472 (April 4, 2012).

[3] The amendment made changes to OCC's ''Fitness Standard for Directors, Clearing Members and Others'' to conform it to the recent changes made to OCC's By-Laws pursuant to File No. SR–OCC–2012–01, which was approved by the Commission on March 9, 2012. As such, the amendment was technical in nature and did not require republication of notice.

under Section 8a(2)–(4) of the Commodity Exchange Act (''CEA''), which allows the CFTC to refuse to register or to suspend the registration of futures commission merchants and other entities required to register under the CEA. Neither the CEA nor the CFTC's regulations require DCOs to file a notice similar to that required by Rule 19h–1, and OCC therefore is not proposing to amend Article V or the Rules to specifically address statutory disqualifications under the CEA other than to clarify that if a principal of a futures commission merchant is subject to a statutory disqualification, the Membership/Risk Committee has discretion to not recommend the approval of such futures commission merchant's application for membership pursuant to Section 8a(2) of the CEA or to determine not to permit such a futures commission merchant to continue in Clearing Membership.

In addition to being consistent with the Commission's regulations, OCC's Fitness Standards, as described above, were constructed in part to comply with core principles (''Core Principles'') applicable to DCOs as these core principles were amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act and as are set forth in the CEA. The Fitness Standards establish certain minimum fitness criteria for directors, Clearing Members, and their affiliates sufficient to comply with Core Principle O as set forth in the CEA.[5] However, the Fitness Standards were also drafted to conform to OCC's existing qualification standards for Clearing Members, which standards OCC is now proposing to revise. Accordingly, OCC proposes to amend the Fitness Standards to conform them to the proposed amendments to the qualification standards for Applicants and Clearing Members in OCC's By-Laws.

B. Proposed By-Law Changes

Article V (Clearing Members) sets forth the qualifications for Clearing Members. OCC proposes to amend the current Article V provisions addressing statutory disqualifications to eliminate provisions that require unnecessary Committee action and to add provisions designed to ensure that OCC receives appropriate notice of a statutory disqualification in order to discharge its obligations as an SRO. The proposed amendments are generally based on similar rules of the National Securities Clearing Corporation and the Chicago Board Options Exchange. OCC proposes to amend Article V, Section 1, Interpretation and Policy .03 (Experience and Competence) to:

1. Eliminate the requirement that the Committee must find ''special circumstances'' warranting the waiver of a statutory disqualification in order to recommend an Applicant's approval for clearing membership providing instead that the Committee may in its discretion consider a statutory disqualification in determining whether or not to recommend approval.

2. Eliminate the requirement that the Committee address the status of associated persons who are subject to statutory disqualifications.

3. Establish procedures requiring Clearing Members and Applicants to provide notice of a statutory disqualification.

4. Eliminate the second paragraph of subsection c. The definition of statutory disqualification in subsection a. includes the conduct covered by Section 15(b)(4)(B) of the Act, making the second paragraph of subsection c. redundant.

OCC proposes to amend Chapter II and Chapter XII of its Rules to:

1. Establish procedures applicable to Clearing Members who are or become subject to a statutory disqualification to provide that: (i) OCC has the discretion not to permit any such Clearing Member to continue in Clearing Membership, (ii) such Clearing Member must notify OCC of any statutory disqualification and may seek to continue in Clearing Membership, (iii) a failure to notify OCC of a statutory disqualification may be deemed a violation of OCC's rules, (iv) OCC may convene a Disciplinary Committee to conduct a hearing concerning a Clearing Member's statutory disqualification, (v) OCC has discretion to waive such provisions if another self-regulatory organization is conducting a proceeding addressing a Clearing Member's statutory disqualification with respect to the same matter, and (vi) OCC has discretion to waive the hearing provisions if OCC intends to grant the Clearing Member's application to continue in Clearing Membership in certain circumstances.

2. Add Interpretation and Policy .01 to Rule 1201 in order to clarify that a decision to suspend or expel a Clearing Member after a disciplinary proceeding under Chapter XII of the Rules would be grounds for summary suspension under Chapter XI of the Rules.

OCC also proposes to amend its Fitness Standards to conform them to the proposed amendments to OCC's By-Laws.

[5] Commodity Exchange Act § 5b(c)(2)(O); 7 U.S.C. 7a–1(c)(2)(O).

III. Discussion

Section 19(b)(2)(C) of the Act[6] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act[7] requires, among other things, that the rules of a clearing agency are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency.

The proposed changes to OCC's By-Laws are designed to more closely align OCC's By-Laws and Rules with applicable regulatory requirements, to establish standard notification and other procedures, to provide Clearing Members with guidance as to OCC's policies regarding statutory disqualifications, to facilitate the timely filing of notices pursuant to Rule 19h–1 should OCC determine to admit to membership or continue in membership any person subject to a statutory disqualification. The proposed changes are not designed to permit unfair discrimination in the admission of participants or among participants in the use of OCC. As a result, the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[8] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change, as amended, (File No. SR–OCC–2012–03) be, and hereby is, approved.[10]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin O'Neill,

Deputy Secretary.

[FR Doc. 2012–12547 Filed 5–23–12; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(2)(C).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78s(b)(2).

[10] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67022; File No. SR–NASDAQ–2012–043]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Establish the Market Quality Program

May 18, 2012.

On March 23, 2012, The NASDAQ Stock Market LLC (''NASDAQ'') filed with the Securities and Exchange Commission (''SEC'' or ''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 establish the Market Quality Program. On March 29, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on April 12, 2012.[4] The Commission received fifteen comment letters on the proposal.[5]

Section 19(b)(2) of the Act [6] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is May 27, 2012. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change, the comments received, and any response to the comments submitted by NASDAQ. The proposed rule change would, among other things, add new Rule 5950 to establish the Market Quality Program and exempt the Market Quality Program from NASDAQ Rule 2460 (Payment for Market Making).

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[7] designates July 11, 2012, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–NASDAQ–2012–043).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–12584 Filed 5–23–12; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made a technical amendment to Item I of Exhibit 1 to delete an erroneous reference to the NASDAQ Options Market and replace it with a reference to the Exchange.

[4] Securities Exchange Act Release No. 66765 (April 6, 2012), 77 FR 22042.

[5] *See* Letter from Frank Choi, dated April 13, 2012; Letter from Christopher J. Csicsko, dated April 14, 2012; Letter from Jeremiah O'Connor III, dated April 14, 2012; Letter from Dezso J. Szalay, dated April 15, 2012; Letter from Kathryn Keita, dated April 18, 2012; Letter, Anonymous, dated April 18, 2012; Letter from Mark Connell, dated April 19, 2012; Letter from Timothy Quast, Managing Director, Modern Networks IR LLC, dated April 26, 2012; Letter from Daniel G. Weaver, Ph.D., Professor of Finance, Rutgers Business School, dated April 26, 2012; Letter from Amber Anand, Associate Professor of Finance, Syracuse University, dated April 29, 2012; Letter from Albert J. Menkveld, Associate Professor of Finance, VU University Amsterdam, dated May 2, 2012; Letter from James J. Angel, Associate Professor of Finance, Georgetown University, dated May 2, 2012; Letter from Ari Burstein, Senior Counsel, Investment Company Institute, dated May 3, 2012; Letter from Gus Sauter, Managing Director and Chief Investment Officer, Vanguard, dated May 3, 2012; and Letter from Leonard J. Amoruso, General Counsel, Knight Capital Group, Inc., dated May 4, 2012.

[6] 15 U.S.C. 78s(b)(2).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67020; File No. SR–NYSEArca–2012–41]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule Relating to Electronic Executions of Posted Customer Liquidity in Penny Pilot Issues

May 18, 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 May 8, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (''Fee Schedule'') to restructure the threshold qualifications and corresponding rates applicable to Option Trading Permit (''OTP'') Holder and OTP Firm electronic executions of posted Customer liquidity in Penny Pilot issues. 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 amend the Fee Schedule to restructure the threshold qualifications and corresponding rates applicable to OTP Holder and OTP Firm electronic executions of posted Customer liquidity in Penny Pilot issues. The Exchange proposes to make the changes operative on May 8, 2012.

OTP Holders and OTP Firms are currently provided with a credit of $0.25 per contract for electronic executions of posted Customer liquidity in Penny Pilot issues.[3] However, the amount of this credit increases as an OTP Holder or OTP Firm electronically executes a certain monthly total number

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As provided under NYSE Arca Options Rule 6.72, options on certain issues have been approved to trade with a minimum price variation of $0.01 as part of a pilot program that is currently scheduled to expire on June 30, 2012.

of contracts of posted Customer liquidity in Penny Pilot issues. These current thresholds and rates are as follows:

	Monthly total contracts executed from posted liquidity	Per contract rate on all posted liquidity
Threshold 1	More than 350,000	−$0.28
Threshold 2	More than 800,000	−0.36
Threshold 3	More than 1,200,000	−0.42
Threshold 4	More than 3,500,000	−0.43

The volume thresholds and corresponding credits are intended to incent OTP Holders and OTP Firms to route additional Customer orders in Penny Pilot issues to the Exchange. In this regard, once a particular threshold is met, the per contract credit rate applies to all of the OTP Holder's or OTP Firm's electronic executions of posted Customer liquidity in Penny Pilot issues for the month.

The Exchange proposes to restructure the threshold qualifications as follows: [4]

- First, the current thresholds are based on the total number of contracts of posted Customer liquidity in Penny Pilot issues that an OTP Holder or OTP Firm executes electronically during the course of a month. The Exchange will now calculate the qualification based on average daily volume (''ADV'') in various categories instead of total monthly volume. For purposes of this calculation, days when the market closes early are not included in the ADV.[5] The credit applied to posted electronic customer orders in Penny Pilot issues will continue to be a base rate of $0.25 per executed contract.
- OTP Holders and OTP Firms who have an ADV of 15,000 executed electronic posted Customer contracts in Penny Pilot issues will have a credit of $0.38 (''Tier 1'') applied to posted electronic Customer contracts executed in Penny Pilot issues.[6]
- OTP Holders and OTP Firms will have two alternative methods to qualify for a credit of $0.40 (''Tier 2'') applied to posted electronic Customer contracts executed in Penny Pilot issues. An OTP Holder or OTP Firm may qualify for Tier 2 by:
  - ○ Having an ADV of 25,000 executed electronic posted Customer contracts in Penny Pilot issues, or
  - ○ Having an ADV of 75,000 executed electronic posted contracts in Penny Pilot issues, regardless of Clearing Account type, from all affiliated OTP Holders and OTP Firms.
- OTP Holders and OTP Firms who have an ADV of 50,000 executed electronic posted Customer contracts in Penny Pilot issues will have a credit of $0.43 (''Tier 3'') applied to posted electronic Customer contracts executed in Penny Pilot issues.
- OTP Holders and OTP Firms will have three alternative methods to qualify for a credit of $0.44 (''Tier 4'') applied to posted electronic Customer contracts executed in Penny Pilot issues. An OTP Holder or OTP Firm may qualify by:
  - ○ Having a combination of an ADV of 65,000 executed electronic posted Customer contracts in Penny Pilot issues AND an average daily posted share volume on NYSE Arca Equities, executed electronically by an affiliated Equity Trading Permit (''ETP'') Holder, of 0.30% or more of U.S. Consolidated ADV for transactions reported to the Consolidated Tape, excluding volume on days when the market closes early, or
  - ○ Having an ADV of 100,000 executed electronic posted contracts in Penny Pilot issues, regardless of Clearing Account type, from all affiliated OTP Holders and OTP Firms, or
  - ○ Having an ADV of 100,000 executed electronic Customer contracts, either posted or removing, in Penny Pilot issues.

Collectively, the proposed new tiers and corresponding rates would be as follows:

Tier	Qualification basis (average electronic executions per day) **			Credit applied to posted electronic customer executions in penny pilot issues
Base				($0.25)
Tier 1	15,000 Customer Posted Contracts in Penny Pilot Issues.			($0.38)
Tier 2	25,000 Customer Posted Contracts in Penny Pilot Issues, or.	75,000 Posted Contracts in Penny Pilot Issues, any Account Type *.		($0.40)
Tier 3	50,000 Customer Posted Contracts in Penny Pilot Issues.			($0.43)

[4] The current threshold qualifications and corresponding credit rates would apply to executions prior to May 8, 2012. In this regard, if an OTP Holder's or OTP Firm's electronic executions of posted customer liquidity in May 2012 satisfy one of the current thresholds, the current per contract credit rate would apply to all of the OTP Holder's or OTP Firm's electronic executions of posted Customer liquidity in Penny Pilot issues from May 1, 2012 through May 7, 2012.

[5] For the month of May 2012, ADV would be calculated from May 8, 2012, the effective and operative date of this proposed change, through the end of the month. In this regard, if an OTP Holder or OTP Firm qualifies for a particular proposed new tier during May 2012, the proposed corresponding per contract credit rate would apply to all of the OTP Holder's or OTP Firm's electronic executions of posted Customer liquidity in Penny Pilot issues from May 8, 2012 through the end of May 2012.

[6] Qualified Contingent Cross (''QCC'') Orders are neither posted nor taken; thus QCC transactions are not included in any of the options volume calculations.

Tier				
Tier 4	65,000 Customer Posted Contracts in Penny Pilot Issues, Plus 0.3% of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market,* or.	100,000 Posted Contracts in Penny Pilot Issues, any Account type,* or.	100,000 Customer Posted and Removing Contracts in Penny Pilot Issues.	($0.44)

* Includes transaction volume from the OTP Holder's or OTP Firm's affiliates.
** For the month of May 2012, calculation of average electronic executions per day shall begin on May 8, 2012.

The Exchange proposes to retain the current table in the Fee Schedule for the remainder of May 2012, but thereafter to remove it completely, along with any other text within the current and proposed new tables that has been included to differentiate between the current thresholds and rates and newly proposed tiers and rates.[7] The proposed new table would represent the restructuring of the qualifications, with new rows and headers. The Exchange also proposes to streamline the introductory language for the proposed new tier and rate table in the Fee Schedule, as compared to the current table, by specifying that, as is the case today, OTP Holders and OTP Firms that satisfy the applicable tiers will receive the corresponding posting credits on all posted Customer electronic executions in Penny Pilot issues. This would include language specifying that, as is the case today, the credit rate applies to all posted Customer electronic executions by the OTP Holder or OTP Firm in Penny Pilot issues for the month.

Finally, the Exchange will add explanatory endnote 8 noting that executions of QCC orders and routed orders are not included in the volume calculation, that the definition of ''Affiliate'' is provided in NYSE Arca Rule 1.1(a),[8] and that only electronic executions are included in the volume calculation. The insertion of a new endnote will result in the renumbering of all subsequent existing endnotes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[9] in general, and furthers the objectives of Section 6(b)(4) of the Act,[10] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed restructuring of the current thresholds and credits is reasonable, equitable and not unfairly discriminatory because the resulting tiers and credits would preserve an existing program on the Exchange that encourages OTP Holders and OTP Firms to send additional Customer orders to the Exchange. In this regard, the Exchange believes that the proposed tiers and corresponding credits would continue to incentivize OTP Holders and OTP Firms to increase the level of Customer order flow sent to, and liquidity added on, the Exchange, thereby potentially improving the quality and efficiency of order interaction and executions on the Exchange.

The Exchange believes that the proposed increase in the applicable credits would further incentivize OTP Holders and OTP Firms to send Customer orders to the Exchange. The Exchange believes that this aspect of the proposed change is reasonable, equitable and not unfairly discriminatory because the higher credits would create an incrementally higher incentive for OTP Holders and OTP Firms to bring additional liquidity to the Exchange, which may contribute to price discovery and may benefit investors, generally. The Exchange notes that it has proposed these higher credits without proposing any increase in the fees charged to OTP Holders and OTP Firms for executions of Customer orders that remove liquidity from the Exchange. Accordingly, the proposed change may have the effect of reducing overall Customer execution costs, to the extent that OTP Holders and OTP Firms pass this savings on to Customers.

The Exchange further believes that the proposed tiers are reasonable, equitable and not unfairly discriminatory because they are set at levels that would be more achievable for OTP Holders and OTP Firms. In this regard, the Exchange has proposed that the volume levels for the tiers be decreased as compared to the current thresholds. Additionally, the Exchange has proposed more than one method of qualifying for certain of the tiers. Overall, the Exchange believes that this will result in more OTP Holders and OTP Firms qualifying for the tiers, receiving the increased credits, and therefore reducing their overall transaction costs on the Exchange. The Exchange also believes that the proposed change is reasonable, equitable and not unfairly discriminatory because the rates for the proposed credits are set at levels that are directly related to the level of liquidity required under the proposed corresponding tiers.

The Exchange further believes that the proposed change is reasonable, equitable and not unfairly discriminatory because the tiers, and the corresponding credits, will apply uniformly to all OTP Holders and OTP Firms. Additionally, the Exchange believes that the aspect of the proposed change related to the activity of an affiliated ETP Holder on NYSE Arca Equities is reasonable, equitable and not unfairly discriminatory because it would encourage increased trading activity on both the NYSE Arca equity and option markets. In this regard, the proposal is designed to bring additional posted order flow to NYSE Arca Equities, so as to provide additional opportunities for all ETP Holders to trade on NYSE Arca Equities.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must

[7] The Exchange would submit a proposed rule change with the Commission to effect the removal of this language.

[8] Affiliated firms are those that control, or are controlled by, or are under common control with an OTP Holder or OTP Firm. OTP Holders and OTP Firms must report their Affiliates, including ETP Holders, to the Exchange's Client Relations Services (''CRS'') Department. CRS will inform the Exchange's billing department of changes in affiliate status that would affect the qualification of trading volumes with respect to these fees.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. The Exchange believes that the proposed rule change reflects this competitive environment because it would broaden the conditions under which OTP Holders and OTP Firms may qualify for the tiers and because it would result in an increase in the corresponding credit rates.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [11] of the Act and subparagraph (f)(2) of Rule 19b–4 [12] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

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–NYSEArca–2012–41 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–2012–41. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–41 and should be submitted on or before June 14, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–12618 Filed 5–23–12; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67026; File No. SR–Phlx–2012–68]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, by NASDAQ OMX PHLX LLC To Accept Inbound Orders From NASDAQ OMX BX's New Options Market

May 18, 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 May 15, 2012, NASDAQ OMX PHLX LLC (''Exchange'' or ''PHLX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Item I below, which Item has been prepared by the Exchange. On May 17, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] 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 file with the Commission a proposal for PHLX to accept inbound orders routed by NASDAQ Options Services LLC (''NOS'') from NASDAQ OMX BX's new options market (with the attendant obligations and conditions), as described further below, on a one year pilot basis.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made a technical amendment to the Item 3.a of the Form 19b–4 and Item II of Exhibit 1 in the third bullet point, which begins with the word ''Third'' to add the words ''the Exchange or'' in front of the word ''FINRA'' in the second parenthetical.

statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In conjunction with a proposal by NASDAQ OMX BX (''BX'') to establish a new options market and provide outbound routing services to all markets using its affiliated routing broker, NOS,[4] PHLX proposes that NOS be permitted to route orders from BX to PHLX on a one year pilot basis.

NOS is a broker-dealer and member of PHLX, BX and The NASDAQ Stock Market (''NASDAQ''). NOS provides all routing functions for NASDAQ[5] and PHLX,[6] and BX has proposed that NOS do so for BX as well.[7] NASDAQ, PHLX, BX and NOS are affiliates. Accordingly, the affiliate relationship between PHLX and NOS, its member, raises the issue of an exchange's affiliation with a member of such exchange.[8] Specifically, in connection with prior filings, the Commission has expressed concern that the affiliation of an exchange with one of its members raises the potential for unfair competitive advantage and potential conflicts of interest between an exchange's self-regulatory obligations and its commercial interests.[9]

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange of which it is a member, PHLX previously proposed, and the Commission approved, limitations and conditions on NOS's affiliation with PHLX.[10] Also recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, PHLX previously proposed, and the Commission approved,[11] NOS's affiliation with PHLX to permit PHLX to accept inbound orders that NOS routes in its capacity as a facility of NASDAQ, subject to the certain limitations and conditions. PHLX now proposes to accept inbound options orders that NOS routes in its capacity as a facility of BX, subject to these same limitations and conditions:

- First, PHLX and the Financial Industry Regulatory Authority (''FINRA'') will maintain a Regulatory Contract, as well as an agreement pursuant to Rule 17d–2 under the Act (''17d–2 Agreement'').[12] Pursuant to the Regulatory Contract and the 17d–2 Agreement, FINRA will be allocated regulatory responsibilities to review NOS's compliance with certain PHLX rules.[13] Pursuant to the Regulatory Contract, however, PHLX retains ultimate responsibility for enforcing its rules with respect to NOS.
- Second, FINRA will monitor NOS for compliance with PHLX's trading rules, and will collect and maintain certain related information.[14]
- Third, FINRA will provide a report to PHLX's chief regulatory officer (''CRO''), on a quarterly basis, that: (i) Quantifies all alerts (of which the Exchange or FINRA is aware) that identify NOS as a participant that has potentially violated Commission or Exchange rules, and (ii) lists all investigations that identify NOS as a participant that has potentially violated Commission or Exchange rules.
- Fourth, PHLX has in place PHLX Rule 985, which requires NASDAQ OMX, as the holding company owning both PHLX and NOS, to establish and maintain procedures and internal controls reasonably designed to ensure that NOS does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to PHLX's systems as a result of its affiliation with PHLX, until such information is available generally to similarly situated Exchange members, in connection with the provision of inbound order routing to PHLX.
- Fifth, PHLX proposes that the routing of orders from NOS to PHLX, in NOS's capacity as a facility of BX be authorized for a pilot period of one year.

PHLX believes that the above-listed conditions protect the independence of PHLX's regulatory responsibility with respect to NOS, and that these mitigate the aforementioned concerns about potential conflicts of interest and unfair competitive advantage.

2. Statutory Basis

PHLX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[15] in general, and with Section 6(b)(5) of the Act,[16] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, because the proposed rule change will allow PHLX to receive inbound routes of orders from NOS, acting in its capacity as a facility of BX, in a manner consistent with prior approvals and established protections. PHLX believes that the proposed conditions establish mechanisms that protect the independence of PHLX's regulatory responsibility with respect to NOS, as well as ensure that NOS cannot use any information it may have because of its affiliation with PHLX to its advantage.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[4] *See* SR–BX–2012–030.

[5] *See* NOM Rules Chapter VI, Section 11(e). *See also* Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080).

[6] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[7] *See* SR–BX–2012–030.

[8] Absent an effective filing, Exchange Rule 985(b) would prohibit NOS from being a member of the Exchange.

[9] *See* Securities Exchange Act Release Nos. 59153 (December 23, 2008), 73 FR 80485 (SR–NASDAQ–2008–098); and 62736 (August 17, 2010), 75 FR 51861 (August 23, 2010) (SR–NASDAQ–2010–100).

[10] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[11] *See e.g.,* Securities Exchange Act Release No. 65399 (September 26, 2011), 76 FR 60955 (September 20, 2011) (SR–Phlx–2011–111).

[12] 17 CFR 240.17d–2.

[13] NOS is also subject to independent oversight by FINRA, its designated examining authority, for compliance with financial responsibility requirements.

[14] Pursuant to the Regulatory Contract, both FINRA and PHLX will collect and maintain all alerts, complaints, investigations and enforcement actions in which NOS (in its capacity as a facility of BX routing orders to PHLX) is identified as a participant that has potentially violated applicable Commission or Exchange rules. PHLX and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations.

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2012–68 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–68. 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 10:00 a.m. and 3:00 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–Phlx–2012–68 and should be submitted on or before June 14, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–12619 Filed 5–23–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67024; File No. SR–NASDAQ–2012–060]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Rule 4751(f)(7) Concerning the Processing of the Price To Comply Order

May 18, 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 May 8, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to clarify how the processing of a Price to Comply Order under Rule 4751(f)(7) operates based on the method of entry. The Exchange will implement the change effective May 14, 2012.

The text of the proposed rule change is below. Proposed new language is italics; proposed deletions are in brackets.

* * * * *

4751. Definitions

The following definitions apply to the Rule 4600 and 4750 Series for the trading of securities listed on Nasdaq or a national securities exchange other than Nasdaq.

(a)–(e)

(f) The term ''Order Type'' shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1)–(6) No change.

(7) ''Price to Comply Order'' are orders that, if, at the time of entry, a Price to Comply Order would lock or cross the quotation of an external market, the order will be priced to the current low offer (for bids) or to the current best bid (for offers) and displayed at a price one minimum price increment lower than the offer (for bids) or higher than the bid (for offers). The displayed and undisplayed prices of a Price to Comply order *entered through an OUCH port* may be adjusted once or multiple times depending upon [the method of order entry and]*the election of the member firm and* changes to the prevailing NBBO. *The displayed and undisplayed prices of a Price to Comply order entered through a RASH port may be adjusted multiple times, depending upon changes to the prevailing NBBO.*

(8)–(14) No change.

(g)–(i) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to clarify the effect that the methods of order entry have on the processing of a Price to Comply Order, as described in Rule

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

4751(f)(7).[3] A Price to Comply Order allows a member firm to quote aggressively and still comply with the locked and crossed markets provisions of Regulation NMS.[4] Prior to June 2008, if at the time of entry a Price to Comply Order would create a violation of SEC Rule 610(d) by locking or crossing the protected quote of an external market or would cause a violation of SEC Rule 611 by trading through such a protected quote, the order was converted by the NASDAQ system to a Non-Displayed Order, as defined in Rule 4751(e)(3),[5] and re-priced to the current low offer (for bids) or to the current best bid (for offers). Thereafter, such a Non-Displayed Order would be cancelled by the NASDAQ system if the market moved through the price of the order after the order was accepted.

In June 2008, NASDAQ amended Rule 4751(f)(7).[6] The amendment changed how the Price to Comply Order operates so that a locking or crossing order is no longer converted to a Non-Displayed Order, but rather is displayed at the most aggressive price possible, one minimum price increment worse than the locking price. NASDAQ also added language to the rule, which noted that the Exchange may adjust the displayed and undisplayed prices of a Price to Comply Order once or multiple times, depending on the method of order entry and changes to the National Best Bid and Offer (''NBBO''). In the discussion of the rule change, NASDAQ explained that the displayed and undisplayed price of an individual order may be modified one or more times depending upon the manner of order entry into the system. In particular, if a member chooses to enter a Price to Comply Order via NASDAQ's RASH protocol, the order is priced upon entry and may be adjusted multiple times in response to changes in the prevailing NBBO to move the displayed price closer to the original entered price and display the best possible price consistent with the provisions of Regulation NMS. In addition, each time the displayed price is adjusted, the order will receive a new timestamp for purposes of determining its price/time priority according to NASDAQ's existing processing rules. If a Price to Comply Order is entered via NASDAQ's OUCH protocol, however, the order will be repriced only upon entry and the order is not repriced in the event the prevailing NBBO changes.

NASDAQ is proposing to amend Rule 4751(f)(7) to clarify the effect that the method of order entry has on the processing of the Price to Comply Order. As noted above, the method of entry of a Price to Comply Order determines whether the order is repriced once or multiple times. This will continue to be the case under the amended rule; however, an OUCH subscriber will be afforded the choice to have its Price to Comply Order be subject to repricing either only once or multiple times. Member firms will designate each OUCH protocol order port to use either the single or multiple repricing functionality for any Price to Comply Order entered via that port.[7] A RASH subscriber will continue to have the Price to Comply Order repriced multiple times, when appropriate. The methodology for repricing the Price to Comply Order will not vary based on how the order is entered. Like a RASH-entered Price to Comply Order, each time the OUCH-entered order is repriced it will receive a new timestamp for purposes of determining its price/time priority. As such, a repriced Price to Comply Order is treated as a new order in terms of priority and, as such, there is no guarantee that the OUCH-entered Price to Comply Order will receive priority when it becomes actionable after repricing.

NASDAQ believes that the new functionality and related rule change will serve to reduce the order traffic received using the OUCH protocol. NASDAQ notes that, in certain cases, a member will submit a Price to Comply Order at an aggressive price that it anticipates will be at the NBBO. Often such an order is not submitted at the NBBO and is not executed after repricing because the market does not move to the adjusted order price. In such cases, the member firm will typically submit additional aggressive orders, which likewise are not executed. Because the OUCH protocol is used by member firms that are able to submit a large volume of orders, NASDAQ believes that offering such firms the ability to have NASDAQ reprice a Price to Comply Order multiple times will serve to reduce the excessive volume of orders entered into the System and ultimately canceled.

As noted, NASDAQ will continue to offer OUCH subscribers an alternative to the multiple repricing functionality so that such member firms may elect to have a locked or crossed Price to Comply Order repriced only once, consistent with the current process. NASDAQ believes that this will accommodate member firms that seek the certainty of repricing at most once or whose trading systems depend on the existing repricing mechanism.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and with Section 6(b)(5) of the Act[9] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. NASDAQ believes this proposal is consistent with the Exchange Act and, specifically, Rules 610 and 611of Regulation NMS in that it is designed to prevent orders from locking and crossing market or trading through protected quotes, while also promoting a more efficient market. In this regard, NASDAQ believes that the proposed rule change will promote the efficient use of the Exchange by reducing the number of orders entered into the market and ultimately canceled. The proposed rule change will accomplish this by providing the member firms that tend to enter the greatest number of such orders an option to have the Exchange reprice a single order multiple times. NASDAQ also believes that permitting a high volume user the option to continue to have the Exchange reprice its Price to Comply Order only upon order entry, when appropriate, will ensure member firms with internal systems that act in reliance of this function will continue to operate without disruption.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not

[3] ''Price to Comply Order'' is an order such that, if, at the time of entry, it would lock or cross the quotation of an external market, the order will be priced to the current low offer (for bids) or to the current best bid (for offers) and displayed at a price one minimum price increment lower than the offer (for bids) or higher than the bid (for offers).

[4] 17 CFR 242.610.

[5] ''Non-Displayed Order'' is a limit order that is not displayed in the NASDAQ system, but nevertheless remains available for potential execution against all incoming orders until executed in full or cancelled.

[6] Securities Exchange Act Release No. 57910 (June 3, 2008), 73 FR 32776 (June 10, 2008) (SR–NASDAQ–2008–049).

[7] In the absence of designation from a member firm, NASDAQ will default the member's OUCH port(s) to single repricing.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[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. The Exchange has provided the Commission written notice of its 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–060 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–060. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASDAQ–2012–060 and should be submitted on or before June 14, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–12646 Filed 5–23–12; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67027; File No. SR–NASDAQ–2012–061]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change for the NASDAQ Options Market To Accept Inbound Orders From NASDAQ OMX BX's New Options Market

May 18, 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 May 15, 2012, The NASDAQ Stock Market LLC (''Exchange'' or ''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is filing with the Commission a proposal for the NASDAQ Options Market (''NOM'') to accept inbound orders routed by NASDAQ Options Services LLC (''NOS'') from NASDAQ OMX BX's new options market (with the attendant obligations and conditions), as described further below, on a one year pilot basis.

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In conjunction with a proposal by NASDAQ OMX BX (''BX'') to establish a new options market and provide outbound routing services to all markets using its affiliated routing broker, NOS,[3] NASDAQ proposes that NOS be permitted to route orders from BX to NASDAQ on a one year pilot basis.

NOS is a broker-dealer and member of NASDAQ, BX and NASDAQ OMX PHLX (''PHLX''). NOS provides all routing functions for NASDAQ [4] and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* SR–BX–2012–030.

[4] *See* NOM Rules Chapter VI, Section 11(e). *See also* Securities Exchange Act Release No. 57478

Continued

PHLX,[5] and BX has proposed that NOS do so for BX as well.[6] NASDAQ, PHLX, BX and NOS are affiliates. Accordingly, the affiliate relationship between NASDAQ and NOS, its member, raises the issue of an exchange's affiliation with a member of such exchange.[7] Specifically, in connection with prior filings, the Commission has expressed concern that the affiliation of an exchange with one of its members raises the potential for unfair competitive advantage and potential conflicts of interest between an exchange's self-regulatory obligations and its commercial interests.[8]

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange of which it is a member, NASDAQ previously proposed, and the Commission approved, limitations and conditions on NOS's affiliation with NASDAQ.[9] In addition, NASDAQ is permitted to accept inbound orders that NOS routes in its capacity as a facility of PHLX, subject to certain limitations and conditions.[10]

Also recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, many exchanges have filed with the Commission the conditions and limitations under which they can accept inbound orders from an affiliated exchange using an affiliated router.[11] At this time, NASDAQ proposes to accept inbound options orders that NOS will route in its capacity as a facility of BX, subject to the following limitations and conditions:

- First, NASDAQ and the Financial Industry Regulatory Authority (''FINRA'') will maintain a Regulatory Contract, as well as an agreement pursuant to Rule 17d–2 under the Act (''17d–2 Agreement'').[12] Pursuant to the Regulatory Contract and the 17d–2 Agreement, FINRA will be allocated regulatory responsibilities to review NOS's compliance with certain NASDAQ rules.[13] Pursuant to the Regulatory Contract, however, NASDAQ retains ultimate responsibility for enforcing its rules with respect to NOS.
- Second, FINRA will monitor NOS for compliance with NASDAQ's trading rules, and will collect and maintain certain related information.[14]
- Third, FINRA will provide a report to NASDAQ's chief regulatory officer (''CRO''), on a quarterly basis, that: (i) Quantifies all alerts (of which the Exchange or FINRA is aware) that identify NOS as a participant that have potentially violated Commission or Exchange rules, and (ii) lists all investigations that identify NOS as a participant that has potentially violated Commission or Exchange rules.
- Fourth, NASDAQ is amending NASDAQ Rule 2160[15] to require NASDAQ OMX, as the holding company owning both NASDAQ and NOS, to establish and maintain procedures and internal controls reasonably designed to ensure that NOS does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to NASDAQ's systems as a result of its affiliation with NASDAQ, until such information is available generally to similarly situated Exchange members, in connection with the provision of inbound order routing to NASDAQ. Currently, Rule 2160 applies to NES; NASDAQ proposes to add NOS to this rule.
- Fifth, NASDAQ proposes that the routing of orders from NOS to NASDAQ, in NOS's capacity as a facility of BX be authorized for a pilot period of one year.

NASDAQ believes that the above-listed conditions protect the independence of NASDAQ's regulatory responsibility with respect to NOS, and that these mitigate the aforementioned concerns about potential conflicts of interest and unfair competitive advantage.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[16] in general, and with Section 6(b)(5) of the Act,[17] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, because the proposed rule change will allow NASDAQ to receive inbound routes of orders from NOS, acting in its capacity as a facility of BX, in a manner consistent with prior approvals and established protections. NASDAQ believes that the proposed conditions establish mechanisms that protect the independence of NASDAQ's regulatory responsibility with respect to NOS, as well as ensure that NOS cannot use any information it may have because of its affiliation with NASDAQ to its advantage.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

(March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080).

[5] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[6] *See* SR–BX–2012–030.

[7] Absent an effective filing, Exchange Rule 2160(b) would prohibit NOS from being a member of the Exchange.

[8] *See e.g.,* Securities Exchange Act Release No. 59153 (December 23, 2008), 73 FR 80485 (December 31, 2008) (SR–NASDAQ–2008–098); and 62736 (August 17, 2010), 75 FR 51861 (August 23, 2010) (SR–NASDAQ–2010–100).

[9] *See* Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080).

[10] *See* Securities Exchange Act Release No. 59948 (May 20, 2009), 74 FR 25784 (May 29, 2009) (SR–NASDAQ–2009–047).

[11] *See e.g.,* Securities Exchange Act Release No. 65399 (September 26, 2011), 76 FR 60955 (September 20, 2011) (SR–Phlx–2011–111).

[12] 17 CFR 240.17d–2.

[13] NOS is also subject to independent oversight by FINRA, its designated examining authority, for compliance with financial responsibility requirements.

[14] Pursuant to the Regulatory Contract, both FINRA and NASDAQ will collect and maintain all alerts, complaints, investigations and enforcement actions in which NOS (in its capacity as a facility of BX routing orders to NASDAQ) is identified as a participant that has potentially violated applicable Commission or Exchange rules. NASDAQ and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations.

[15] Currently, NASDAQ Rule 2160 requires NASDAQ OMX, as the holding company owning both NASDAQ and NASDAQ Execution Services, LLC (''NES''), to establish and maintain procedures and internal controls reasonably designed to ensure that NES does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to NASDAQ's systems as a result of its affiliation with NASDAQ, until such information is available generally to similarly situated Exchange members, in connection with the provision of inbound order routing to NASDAQ.

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–061 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–061. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–061 and should be submitted on or before June 14, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. [18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–12620 Filed 5–23–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67017; File No. SR–BATS–2012–017]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

May 18, 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 May 11, 2012, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fee schedule applicable to Members [3] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on May 14, 2012.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, on the Commission's Web site at *www.sec.gov*, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify the ''Equities Pricing'' section of its fee schedule to update the number of ports provided in connection with the Exchange's Multicast PITCH data feed. As described in further detail below, there is no change to the fee structure for logical ports used to receive Multicast PITCH data from the Exchange, but rather, simply an update necessary due to an increase to the number of matching engines used to operate the Exchange's platform for cash equities (''BATS Equities''). This increase, in turn, requires an update to the number of logical ports necessary to receive Multicast PITCH data from the Exchange, which is reflected on the Exchange's fee schedule.

Specifically, the Exchange currently operates BATS Equities with 12 matching engines, which in turn requires the use of 12 Multicast PITCH logical ports in order to receive Multicast PITCH data. The Exchange provides all Exchange constituents that receive the Exchange's Multicast PITCH Feed with 12 free pairs [4] of Multicast PITCH Spin Server Ports free of charge and, if such ports are used, one free pair of GRP Ports. The Exchange also charges such customers $400.00 per month per additional pair of GRP Ports or additional set of 12 pairs of Multicast PITCH Spin Server Ports.

As of May 14, 2012, BATS Equities will operate with 32 matching engines.

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[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[4] A pair includes one port at the Exchange's primary data center and another port at the Exchange's secondary data center.

Accordingly, the Exchange proposes to update its fee schedule to provide Exchange constituents that receive the Exchange's Multicast PITCH Feed with 32 free pairs of Multicast PITCH Spin Server Ports free of charge and, if such ports are used, one free pair of GRP Ports. The Exchange also proposes to charge such customers $400.00 per month per additional pair of GRP Ports or additional set of 32 pairs of Multicast PITCH Spin Server Ports.

The Exchange's proposal to continue to provide certain ports free of charge to Multicast Pitch customers is designed to encourage use of the Exchange's Multicast PITCH Feed because the Exchange believes that the feed is its most efficient feed, and thus, will reduce infrastructure costs for both the Exchange and those who utilize the feed. Any Member or non-member that has entered into the appropriate agreements with the Exchange is permitted to receive Multicast Pitch Spin Server Ports and GRP Ports from the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[5] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[6] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls.

As noted above, the Exchange is not changing the fee structure for logical ports necessary to receive Multicast PITCH data from the Exchange, but rather, is increasing the number of ports that comprise a set of ports for the receipt of Multicast PITCH data. The Exchange continues to believe that its logical port fees are reasonable in light of the benefits to Members of direct market access and receipt of data. In addition, the Exchange believes that its fees are equitably allocated among its constituents based upon the number of access ports that they require to submit orders to the Exchange or receive data from the Exchange. The Exchange also believes that providing financial incentives to use Exchange technology that the Exchange believes is the most technologically efficient for the Exchange and its constituents is a fair and equitable approach to pricing. Accordingly, the Exchange believes that promotion of its Multicast PITCH data feed through the continued offering of free logical ports is fair and equitable. Based on the foregoing, the Exchange believes that the proposed pricing structure for logical ports is not unreasonably discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and Rule 19b–4(f)(2) thereunder,[8] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.

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–BATS–2012–017 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–BATS–2012–017. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2012–017, and should be submitted on or before June 14, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–12617 Filed 5–23–12; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67021; File No. SR–OCC–2012–07]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and of Proposed Rule Change Relating to Adjustment Panel Voting

May 18, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on May 7, 2012, the Options Clearing Corporation (''OCC'') 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 primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

The proposed rule change would update the procedures applied to adjustment panel voting and would eliminate the requirement that an adjustment panel be convened to vote on certain specific types of standard contract adjustments affecting equity options.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The principal purposes of this rule change are to update the procedures applied to adjustment panel voting and to eliminate the requirement that an adjustment panel be convened to vote on certain specific types of standard contract adjustments affecting equity options. These changes are intended to improve overall operational efficiency in responding to events for which a contract adjustment may be made.

Background

Certain panels may be convened under OCC's by-laws to (i) determine contract adjustments to the terms of outstanding options when certain events occur (e.g., stock distribution, stock dividend, merger, consolidation or reorganization) and (ii) fix certain amounts or values in respect of certain options in the event a required value is unreported, inaccurate, unreliable, unavailable, or inappropriate. Such panels are convened in accordance with Article VI, Section 11 of OCC's by-laws and currently consist of two representatives of each options exchange on which options affected by the event are traded and one representative of OCC, who votes only in case of a tie. The decision to adjust (and the nature of the adjustment to be made) or to fix an amount or value is made by majority vote of the adjustment panel. Most often, panels are convened to determine adjustments to the terms of outstanding equity options in response to certain corporate events.

The procedures for panel voting, as described in Article VI, Section 11, have not been updated for over 25 years. In the past, a smaller number of OCC options exchanges posed few problems in convening panels to consider adjustments for equity options. Currently, however, there are nine options exchanges and multiple listing of equity options on several, if not all, exchanges is common. It is increasingly difficult to convene two members from each exchange to consider adjustments on a timely basis. This difficulty is magnified when it is necessary to convene panel meetings to address late-breaking events which often occur outside of normal business hours. Additionally, although all equity option adjustments must currently be addressed by an adjustment panel, certain corporate events and their corresponding option adjustments are so regular and predictable that it no longer appears necessary for an adjustment panel to be convened to address them.

The OCC Securities Committee has unanimously endorsed the proposed changes and OCC's Board of Directors and stockholders have authorized OCC to submit this filing. OCC is continuing to evaluate the rules applicable to adjustment determinations and additional changes may be proposed in the future.

Proposed By-Law Changes

As discussed below, OCC is proposing several changes to the voting procedures for the Securities Committee and adjustment panels. OCC believes the proposed changes will provide significant operational efficiencies, allowing OCC and the option exchanges to respond more quickly to corporate events affecting listed options. The proposed changes to the procedures governing adjustment panel voting would (1) Change the requirement that each exchange be represented by two persons to one person,[4] (2) allow that adjustment panel actions be determined by votes accomplished by such means as the Securities Committee may designate for that purpose, (3) provide that certain kinds of corporate events shall not require an adjustment panel vote, (4) define a quorum for adjustment panels and provide for majority vote,[5] and (5) allow the Chairman of OCC to designate a non-officer as his representative on adjustment panels.[6]

The specific corporate events which would no longer require a panel vote to effect an adjustment to the terms of an option would be limited to stock splits or stock distributions where additional shares of the underlying security are issued, reverse splits, and cash mergers or similar events where all shares are exchanged exclusively for cash. Adjustments for stock splits, stock distributions, and reverse splits are generally the most routine option adjustments executed by OCC. Option adjustments for these events, when executed, are the result of well understood formulae and consistent precedent. The Securities Committee does not believe it is necessary to convene adjustment panels for ''boiler plate'' adjustments of this kind. In like manner, mergers and other events where the affected security is exchanged exclusively for cash have always

[3] The Commission has modified the text of the summaries prepared by OCC.

[4] Panels convened by OCC to fix a required amount or value (as provided for in the by-laws) would continue to include two representatives from each exchange on which the affected series is open for trading. (Such panels also include an OCC representative, who votes only in case of a tie.) OCC believes it appropriate to retain this requirement as the need to fix such amount or value generally would involve series that are less likely to be traded on multiple exchanges. However, certain of the procedural changes being made to Article VI, Section 11 will be applied to the by-laws that permit panels to be convened to fix a required amount or value in order to improve efficiency. These changes include eliminating the requirement that at least one panel member from an exchange be a member of the Securities Committee and allowing such panels to transact its business by such means as determined by the Securities Committee.

[5] The intent is to ensure that any adjustment decision is determined by a majority of the exchanges (including a representative of OCC if a voting member) that trade the affected option. For example, if eight exchanges trade an option, five exchanges would constitute a quorum for an adjustment panel. However, a majority vote of these five exchanges would require only three exchanges. In this case an adjustment decision would be determined by a distinct minority of the exchanges trading the option. Specifying an additional requirement that the action be determined by a majority of the exchanges trading the option provides for an additional level of assurance that a majority of eligible voting members will determine an adjustment.

[6] Currently, the Chairman is allowed to designate an OCC officer as his representative. OCC believes the Chairman should be able to designate a non-officer as his representative.

occasioned option adjustments which have called for the delivery of cash. The Securities Committee does not believe it necessary to convene panel meetings to authorize these adjustments.

While an adjustment panel vote would not be required in these cases, an adjustment panel could be convened at any time at the request of any exchange or OCC in order to address any aspect of the corporate event or option contract adjustment deemed to need discussion by such panel. Also, in all cases of option adjustments, OCC and the exchanges would naturally coordinate the operational execution of the adjustments (effective date, option symbol, strike prices, etc).

The proposed changes also allow convened panels the ability to conduct their business by any means determined by the Securities Committee. Currently, the Securities Committee and panels are allowed to conduct business in person or by phone. For the purposes of exchanging information and registering votes, OCC and the Securities Committee believe that electronic means of communication (e.g., email) should also be allowed as well as other means of communication which may be available in the future (e.g., OCC systems applications developed for this purpose).

OCC believes that the proposed changes to its By-Laws are consistent with the purposes and requirements of Section 17A of the Act [7] and the rules and regulations thereunder applicable to OCC because they provide for more efficient and effective procedures to be used by the Securities Committee and its panels for the purpose of conducting business by eliminating impediments that elongate voting processes which may cause delays in determining contract adjustments or in fixing a required amount or value. These changes further the purposes of the Act by facilitating the prompt and accurate clearance and settlement of transactions in cleared contracts. The proposed rule change is not inconsistent with any rules of OCC, including any rules proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

[7] 15 U.S.C. 78q–1.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http//www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2012–07 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–OCC–2012–07. 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 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_12_07.pdf.* 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–OCC–2012–07 in the caption above and should be submitted on or before June 14, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin O'Neill,

Deputy Secretary.

[FR Doc. 2012–12583 Filed 5–23–12; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7894]

Programs To Reduce Incidental Capture of Sea Turtles in Shrimp Fisheries; Certifications Pursuant to Public Law 101–162

SUMMARY: On April 30, 2012, the Department of State certified, pursuant to Section 609 of Public Law 101–162, that 13 nations have adopted programs to reduce the incidental capture of sea turtles in their shrimp fisheries comparable to the program in effect in the United States. The Department also certified that the fishing environments in 26 other countries and one economy do not pose a threat of the incidental taking of sea turtles protected under Section 609.

DATES: *Effective Date:* On publication.

FOR FURTHER INFORMATION CONTACT: Marlene M. Menard, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520–7818; telephone: (202) 647–5827.

SUPPLEMENTARY INFORMATION: Section 609 of Public Law 101–162 (''Section 609'') prohibits imports of certain categories of shrimp unless the President certifies to the Congress not later than May 1 of each year either: (1) That the harvesting nation has adopted a program governing the incidental capture of sea turtles in its commercial shrimp fishery comparable to the program in effect in the United States and has an incidental take rate comparable to that of the United States; or (2) that the fishing environment in the harvesting nation does not pose a threat of the incidental taking of sea turtles. The President has delegated the authority to make this certification to the Department of State (''the Department''). Revised State Department guidelines for making the required certifications were published in the **Federal Register** on July 2, 1999 (Vol. 64, No. 130, Public Notice 3086).

On April 30, 2012, the Department certified 13 nations on the basis that their sea turtle protection programs are comparable to that of the United States: Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Nigeria, Pakistan, Panama, and Suriname. Costa Rica is re-certified this year based on improvement in the implementation and enforcement of its turtle excluder device regulatory program in their commercial shrimp trawl fishery. The Department also certified 26 shrimp harvesting nations and one economy as having fishing environments that do not pose a danger to sea turtles. Sixteen nations have shrimping grounds only in cold waters where the risk of taking sea turtles is negligible. They are: Argentina, Belgium, Canada, Chile, Denmark, Finland, Germany, Iceland, Ireland, the Netherlands, New Zealand, Norway, Russia, Sweden, the United Kingdom, and Uruguay. Ten nations and one economy only harvest shrimp using small boats with crews of less than five that use manual rather than mechanical means to retrieve nets, or catch shrimp using other methods that do not threaten sea turtles. Use of such small-scale technology does not adversely affect sea turtles. The 10 nations and one economy are: the Bahamas, Belize, China, the Dominican Republic, Fiji, Hong Kong, Jamaica, Oman, Peru, Sri Lanka, and Venezuela.

The Department of State has communicated the certifications under Section 609 to the Office of Field Operations of U.S. Customs and Border Protection. All DS–2031 forms accompanying shrimp imports from uncertified nations must be originals and signed by the competent domestic fisheries authority.

In order for shrimp harvested with turtle excluder devices (TEDs) in an uncertified nation to be eligible for importation into the United States under the DS–2031 section 7(A)(2) provision for ''shrimp harvested by commercial shrimp trawl vessels using TEDs comparable in effectiveness to those required in the United States'', the Department of State must determine in advance that the government of the harvesting nation has put in place adequate procedures to ensure the accurate completion of the DS–2031 forms. At this time, the Department has made such a determination only with respect to Australia, Brazil and France. Thus, the importation of TED-caught shrimp from any other uncertified nation will not be allowed. For Brazil, only shrimp harvested in the northern shrimp fishery are eligible for entry under this provision. For Australia, shrimp harvested in the Exmouth Gulf Prawn Fishery, the Northern Prawn Fishery, the Queensland East Coast Trawl Fishery, and the Torres Strait Prawn Fishery are eligible for entry under this provision. For France, shrimp harvested in the French Guiana domestic trawl fishery are eligible for entry under this provision. An official of the competent domestic fisheries authority for the country where the shrimp were harvested must sign the DS–2031 form accompanying these imports into the United States.

In addition, the Department has determined that shrimp harvested in the Spencer Gulf region in Australia may be exported to the United States under the DS–2031 section 7(A)(4) provision for ''shrimp harvested in a manner or under circumstances determined by the Department of State not to pose a threat of the incidental taking of sea turtles.'' An official of the Government of Australia must certify the DS–2031 form accompanying these imports into the United States.

Dated: May 17, 2012.

David A. Balton,

Deputy Assistant Secretary of State for Oceans and Fisheries, Department of State.

[FR Doc. 2012–12635 Filed 5–23–12; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2012–22]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before June 13, 2012.

ADDRESSES: You may send comments identified by Docket Number FAA–2012–0514 using any of the following methods:

- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- Fax: Fax comments to the Docket Management Facility at 202–493–2251.
- Hand Delivery: Bring comments to the Docket Management Facility 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.

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 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).

Docket: To read background documents or comments received, go to

http://www.regulations.gov at any time or to the Docket Management Facility 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: Carol Greb, ACE–114, (816) 329–4136, Federal Aviation Administration, 901 Locust St., Kansas City, MO 64106, or Frances Shaver, ARM–207, (202) 267–4059, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

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

Lirio Liu,

Acting Director, Office of Rulemaking.

Petition For Exemption

Docket No.: FAA–2012–0514.

Petitioner: ICON Aircraft.

Sections of 14 CFR Affected: Certain sections of parts 21, and 61 and § 43.7.

Description of Relief Sought: ICON seeks relief to allow it to incorporate a spin-resistant airframe in the ICON A5 aircraft at a weight above the current light-sport aircraft definition.

[FR Doc. 2012–12667 Filed 5–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2012–19]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before June 13, 2012.

ADDRESSES: You may send comments identified by Docket Number FAA–2003–14563 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility 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.

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 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).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility 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: Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–7143; email: *rob.hawks@faa.gov.* This notice is published pursuant to 14 CFR 11.85.

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

Lirio Liu,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2003–14563.

Petitioner: AirTran Airways, Inc.

Section of 14 CFR Affected: 14 CFR 93.123.

Description of Relief Sought: AirTran Airways, Inc. (AirTran) requests an exemption from the slot limit for Ronald Reagan Washington National Airport (DCA) set forth in § 93.123(a). This exemption would permit AirTran to continue to operate three slots, which it currently uses to facilitate service between DCA and Hartsfield-Jackson Atlanta International Airport, Milwaukee County's General Mitchell International Airport, and Southwest Florida International Airport.

On June 14, 2010, the FAA renewed AirTran's exemption until September 30, 2012. That grant of exemption stated the FAA would publish any future extension petitions to permit the public to comment on the continued public interest served by this exemption. Specifically, the FAA requests comments focus on three issues: (1) Whether the FAA should extend the exemption to AirTran for a period of at least 2 years; (2) whether the FAA should permit the exemption to retire according to its terms; and (3) whether the FAA should permit the exemption to retire and grant a similar exemption to another carrier following a lottery among interested new entrant or limited incumbent carriers as defined in 14 CFR 93.123. The FAA will review all comments received and may publish an additional notice.

[FR Doc. 2012–12647 Filed 5–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2012–20]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before June 13, 2012.

ADDRESSES: You may send comments identified by Docket Number FAA–2002–13734 using any of the following methods:

- *Government-wide rulemaking web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility 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.

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 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).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility 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: Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–7143; email: *rob.hawks@faa.gov.* This notice is published pursuant to 14 CFR 11.85.

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

Lirio Liu,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2002–13734.

Petitioner: Republic Airline, Inc.

Section of 14 CFR Affected: 14 CFR 93.123.

Description of Relief Sought: Republic Airline Inc. (Republic) requests an exemption from the slot limit for Ronald Reagan Washington National Airport (DCA) set forth in § 93.123(a). This exemption would permit Republic to continue to operate one slot, which it currently uses for nonstop service between DCA and Milwaukee County's General Mitchell International Airport.

On June 14, 2010, the FAA renewed Republic's exemption until September 30, 2012. That grant of exemption stated the FAA would publish any future extension petitions to permit the public to comment on the continued public interest served by this exemption. Specifically, the FAA requests comments focus on three issues: (1) Whether the FAA should extend the exemption to Republic for a period of at least 2 years; (2) whether the FAA should permit the exemption to retire according to its terms; and (3) whether the FAA should permit the exemption to retire and grant a similar exemption to another carrier following a lottery among interested new entrant or limited incumbent carriers as defined in 14 CFR 93.123. The FAA will review all comments received and may publish an additional notice.

[FR Doc. 2012–12668 Filed 5–23–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0135]

Agency Information Collection Activities; Extension of a Currently-Approved Information Collection: Licensing Applications for Motor Carrier Operating Authority

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. The FMCSA seeks approval to extend an ICR entitled, ''Licensing Applications for Motor Carrier Operating Authority,'' that is used by for-hire motor carriers of regulated commodities, motor passenger carriers, freight forwarders, property brokers, and certain Mexico-domiciled motor carriers to register their operations with the FMCSA. The agency invites public comment on the ICR. On March 14, 2012, FMCSA published a **Federal Register** notice allowing for a 60-day comment period on the ICR. No comments were received.

DATES: Please send your comments by June 25, 2012. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2012–0135. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Denise Ryan, Transportation Specialist, Office of Information Technology, Information Technology Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, 6th Floor, West Building, 1200 New Jersey Ave. SE., Washington, DC 20590, Telephone Number (202) 493–0242; Email Address *denise.ryan@dot.gov.* Office hours are from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Title: Applications for Motor Carrier Operating Authority.

OMB Control Number: 2126–0016.

Type of Request: Extension of a currently-approved information collection.

Respondents: Motor carriers, motor passenger carriers, freight forwarders, brokers, and certain Mexico-domiciled motor carriers.

Estimated Number of Respondents: 37,239.

Estimated Time per Response: 4 hours to complete Form OP–1 (MX); and 2 hours to complete Forms OP–1, OP–1(FF), OP–1(P).

Expiration Date: September 30, 2012.

Frequency of Response: Other (as needed).

Estimated Total Annual Burden: 74,556 hours [71,400 hours for Form OP–1 + 2,000 hours for Form OP–1(P) + 1,000 hours for Form OP–1(FF) + 140 hours for Form OP–1(MX) + 16 hours for OP–1(NNA) = 74,556].

Background: The FMCSA is authorized to register for-hire motor carriers of regulated commodities under the provisions of 49 U.S.C. 13902; freight forwarders under the provisions of 49 U.S.C. 13903; property brokers under the provisions of 49 U.S.C. 13904; and certain Mexican motor carriers under the provisions of 49 U.S.C. 13902

and the North American Free Trade Agreement (NAFTA) motor carrier access provisions. The forms used to apply for registration authority with the FMCSA are: Form OP–1 for motor property carriers and brokers; Form OP–1(P) for motor passenger carriers; Form OP–1(FF) for freight forwarders; and Form OP–1(MX) for certain Mexican motor carriers. These forms request information on the applicant's identity, location, familiarity with safety requirements, and type of proposed operations. There are some differences on the forms due to specific statutory standards for registration of the different types of transportation entities.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued on: May 11, 2012.

Kelly Leone,

Associate Administrator for Research and Information Technology.

[FR Doc. 2012–12631 Filed 5–23–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA 2012–0074]

Improvements to the Compliance, Safety, Accountability (CSA) Motor Carrier Safety Measurement System (SMS)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; extension of comment period.

SUMMARY: On March 27, 2012, FMCSA announced planned improvements to the Carrier Safety Measurement System (SMS). A preview of these improvements and their potential effects on a motor carrier's status has been available to motor carriers and law enforcement since publication of the notice. The system changes were scheduled to be implemented for use in prioritizing FMCSA and State intervention resources and made available to the public on the SMS public Web site in July 2012. However, based on feedback received by the Agency, FMCSA extends the comment period for motor carriers and law enforcement to July 30, 2012.

DATES: Comments must be received on or before July 30, 2012.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2012–0074 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, (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).

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: Mr. Bryan Price, Federal Motor Carrier Safety Administration, 1000 Liberty Avenue, Suite 1300, Pittsburgh, PA 15222, Telephone 412–395–4816, E-Mail: *bryan.price@dot.gov.*

SUPPLEMENTARY INFORMATION: On March 27, 2012, (77 FR 18298), FMCSA published a notice announcing changes to the Agency's Safety Measurement System and a preview period for law enforcement and motor carriers to assess the impact of the changes. We provided a 60-day period for initial comments from motor carriers and law enforcement that would have expired on May 29, 2012. However, based on feedback received by the Agency, this comment period is being extended 60 days to July 30, 2012. Once the preview is complete an additional opportunity will be provided for public review and comment.

The improvements proposed include: (1) Changes to the SMS methodology that find higher risk carriers while addressing industry biases; (2) Better applications of SMS results for Agency interventions by more effectively identifying safety sensitive carriers (i.e., passenger carriers transporting people and carriers hauling hazardous materials (HM)), so that such firms can be selected for CSA interventions at more stringent levels; and, (3) More specific fact-based displays of SMS results on the SMS Web site.

This extension will provide motor carriers with additional time to preview how the improvements impact their individual safety data in SMS. Motor carriers will have additional time to take action related to their data in the SMS, and additional time to provide comments to the Agency. The data preview may be found at *http://csa.fmcsa.dot.gov/.* During the extended preview period, FMCSA will be conducting additional outreach to further explain the proposed changes to SMS and to encourage additional motor carriers to view the preview site and to provide comments. As part of these outreach efforts, FMCSA plans to offer a series of webinars related to the proposed SMS improvements and the data preview site. Details regarding the date and time of these webinars, and how to register, will be posted to the above Web site.

During the data preview period, the Agency requests comments on the impacts of the changes.

Issued: May 17, 2012.

William Quade,

Associate Administrator for Enforcement.

[FR Doc. 2012–12634 Filed 5–23–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35623]

Cleveland Commercial Railroad Company, LLC—Continuance in Control Exemption—Cleveland Harbor Belt Railroad

Cleveland Commercial Railroad Company, LLC (CCR), a Class III rail carrier, has filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) to continue in control of Cleveland Harbor Belt Railroad (CHB), upon CHB's becoming a Class III rail carrier. CCR has established CHB as a limited liability company and has the entire ownership interest in CHB.

This transaction is related to a concurrently filed verified notice of exemption in *Cleveland Harbor Belt Railroad—Operation Exemption—Cleveland-Cuyahoga County Port Authority,* Docket No. FD 35624, wherein CHB seeks Board approval to operate approximately one mile of terminal railroad trackage currently owned by Cleveland-Cuyahoga County Port Authority (the Port), in Cleveland, Ohio, and operated as exempt private trackage by CSX Transportation, Inc. (CSXT) and Norfolk Southern Railway. The transaction may be consummated on or after June 7, 2012 (30 days after the notice of exemption was filed).

CCR represents that: (1) The rail line to be operated by CHB will not connect with the lines currently operated by CCR; (2) the continuance in control is not part of a series of anticipated transactions that would result in such a connection; and (3) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

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 May 31, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35623, 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 John D. Heffner, 1700 K Street NW., Suite 640, Washington, DC 20006.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: May 21, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2012–12711 Filed 5–23–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35624]

Cleveland Harbor Belt Railroad—Operation Exemption—Cleveland-Cuyahoga County Port Authority

Cleveland Harbor Belt Railroad (CHB), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate approximately one mile of terminal railroad trackage [1] currently owned by Cleveland-Cuyahoga County Port Authority (the Port) [2] and operated as exempt private trackage by CSX Transportation, Inc. (CSXT) and Norfolk Southern Railway (NS). CHB will replace the service formerly provided by CSXT and NS, and will be operating trackage over rail facilities that are currently being expanded by the Port as part of a vastly expanded port facility.[3]

This transaction is related to a concurrently filed verified notice of exemption in *Cleveland Commercial Railroad Company, LLC—Continuance in Control Exemption—Cleveland Harbor Belt Railroad,* Docket No. FD 35623, in which CCR seeks to continue in control of CHB, upon CHB's becoming a Class III rail carrier.

The transaction may be consummated on or after June 7, 2012 (30 days after the notice of exemption was filed).

CHB certifies that its projected annual revenues as a result of this transaction will not result in CHB's becoming a Class I or Class II rail carrier and will not exceed $5 million.

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 for stay must be filed no later than May 31, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35624, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John D. Heffner, 1700 K Street NW., Suite 640, Washington, DC 20006.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: May 21, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2012–12712 Filed 5–23–12; 8:45 am]

BILLING CODE 4915–01–P

[1] CHB states there are no mileposts on the line.

[2] Cleveland Commercial Railroad Company, LLC (CCR), and its wholly owned assignee, CHB, have filed a copy of the operating agreement with the Port, a noncarrier. *See Anthony Macrie—Continuance in Control Exemption—N.J. Seashore Lines, Inc.,* FD 35296, slip op. at 3–4 (STB served Aug. 31, 2010).

[3] CHB states that there are no agreements applicable to the line imposing any interchange commitments.

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of 2 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 2 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 2 individuals in this notice, pursuant to Executive Order 13224, are effective on May 17, 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 May 17, 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, 2 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. BARI, Abdul Baqi (a.k.a. AL-BAKI, 'Abd; a.k.a. AL-BARI, 'Abd; a.k.a. BAKI, Abdul; a.k.a. BAQI, Abdul; a.k.a. BARI, Haji Abdul; a.k.a. BARI, Abdul; a.k.a. IBRAHIM, 'Abd Al-Baqi Muhammad; a.k.a. IBRAHIM, 'Abd Labaqi Muhammad; a.k.a. ISHAQZAI, Rais Abdul Bari; a.k.a. ''ABDELBAKI''); DOB 1 Jan 1953; alt. DOB 1952; POB Kandahar, Afghanistan; Passport 306749 (Afghanistan) expires 28 Jun 2014; alt. Passport 47168 (Afghanistan) (individual) [SDGT]

2. GUL, Bakht (a.k.a. BAHAR, Bakht Gul; a.k.a. GUL, Bakhta; a.k.a. ''SHUQIB''), Miram Shah, North Waziristan, Federally Administered Tribal Areas, Pakistan; DOB 1980; POB Aki Village, Zadran District, Paktiya Province, Afghanistan; nationality Afghanistan (individual) [SDGT]

Dated: May 17, 2012.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2012–12534 Filed 5–23–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Identifying Information Associated With Persons Whose Property and Interests in Property Are Blocked Pursuant to Executive Order 13606 of April 22, 2012: Blocking Property and Suspending Entry Into United States of Certain Persons With Respect to Grave Human Rights Abuses by Governments of Iran and Syria via Information Technology

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing additional identifying information associated with the one individual and six entities listed in the Annex to Executive Order 13606 of April 22, 2012 ''Blocking the Property and Suspending Entry Into the United States of Certain Persons With Respect to Grave Human Rights Abuses by the Governments of Iran and Syria via Information Technology,'' whose property and interests in property are blocked.

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 (*http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On April 22, 2012, the President issued Executive Order 13606, ''Blocking the Property and Suspending Entry Into the United States of Certain Persons With Respect to Grave Human Rights Abuses by the Governments of Iran and Syria via Information Technology,'' (the ''Order'') pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06). In the Order, the President took additional steps with respect to the national emergencies declared in Executive Order 12957 of March 15, 1995 and Executive Order 13338 of May 11, 2004.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, including any foreign branch, of persons listed in the Annex to the Order and of persons determined by the Secretary of the Treasury, in consultation with or at the recommendation of the Secretary of State, to satisfy certain criteria set forth in the Order.

The Annex to the Order lists one individual and six entities whose property and interests in property are blocked pursuant to the Order. OFAC is publishing additional identifying information associated with the individual and entities. As noted in the listings below, the property and interests in property of the individual and five entities were previously blocked pursuant to other authorities.

The listings for the individual and entities on OFAC's list of Specially Designated Nationals and Blocked persons appear as follows:

Individual

MAMLUK, Ali (a.k.a. MAMLUK, 'Ali); DOB 1947; POB Amara, Damascus, Syria; Major General; Position: Director, General Intelligence Directorate (individual) [SYRIA] -to- MAMLUK, Ali (a.k.a. MAMLUK, 'Ali) ; DOB 1947; POB Amara, Damascus, Syria; Major General; Position: Director, General Intelligence Directorate (individual) [SYRIA] [HRIT-SY]

Entities

DATAK TELECOM, No. 14, Enbe E Yamin Street, North Sohrevardi Ave., Tehran, Iran [HRIT-IR]

IRANIAN MINISTRY OF INTELLIGENCE AND SECURITY (a.k.a. VEZARAT-E ETTELA'AT VA AMNIAT-E KESHVAR; a.k.a. ''MOIS''; a.k.a. ''VEVAK''), bounded roughly by Sanati Street on the west, 30th Street on the south, and Iraqi Street on the east, Tehran, Iran; Ministry of Intelligence, Second Negarestan Street, Pasdaran Avenue, Tehran, Iran [SDGT] [SYRIA] [IRAN-HR] -to- IRANIAN MINISTRY OF INTELLIGENCE AND SECURITY (a.k.a. VEZARAT-E ETTELA'AT VA AMNIAT-E KESHVAR; a.k.a. ''MOIS''; a.k.a. ''VEVAK''), bounded roughly by Sanati Street on the west, 30th Street on the south, and Iraqi Street on the east, Tehran, Iran; Ministry of Intelligence, Second Negarestan Street, Pasdaran Avenue, Tehran, Iran [SDGT] [SYRIA] [IRAN-HR] [HRIT-IR]

ISLAMIC REVOLUTIONARY GUARD CORPS (a.k.a. AGIR; a.k.a. IRANIAN REVOLUTIONARY GUARD CORPS; a.k.a. IRG; a.k.a. IRGC; a.k.a. ISLAMIC REVOLUTIONARY CORPS; a.k.a. PASDARAN; a.k.a. PASDARAN-E ENGHELAB-E ISLAMI; a.k.a. PASDARAN-E INQILAB; a.k.a. REVOLUTIONARY GUARD; a.k.a. REVOLUTIONARY GUARDS; a.k.a. SEPAH; a.k.a. SEPAH PASDARAN; a.k.a. SEPAH-E PASDARAN-E ENQELAB-E ESLAMI; a.k.a. THE ARMY OF THE GUARDIANS OF THE ISLAMIC REVOLUTION; a.k.a. THE IRANIAN REVOLUTIONARY GUARDS), Tehran, Iran [NPWMD] [IRGC] [IRAN-HR] -to- ISLAMIC REVOLUTIONARY GUARD CORPS (a.k.a. AGIR; a.k.a. IRANIAN REVOLUTIONARY GUARD CORPS; a.k.a. IRG; a.k.a. IRGC; a.k.a. ISLAMIC REVOLUTIONARY CORPS; a.k.a. PASDARAN; a.k.a. PASDARAN-E ENGHELAB-E ISLAMI; a.k.a. PASDARAN-E INQILAB; a.k.a. REVOLUTIONARY GUARD; a.k.a. REVOLUTIONARY GUARDS; a.k.a. SEPAH; a.k.a. SEPAH PASDARAN; a.k.a. SEPAH-E PASDARAN-E ENQELAB-E ESLAMI; a.k.a. THE ARMY OF THE GUARDIANS OF THE ISLAMIC REVOLUTION; a.k.a. THE IRANIAN REVOLUTIONARY GUARDS), Tehran, Iran [NPWMD] [IRGC] [IRAN-HR] [HRIT-IR]

LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN (a.k.a. IRANIAN POLICE; a.k.a. IRAN'S LAW ENFORCEMENT FORCES; a.k.a. NAJA; a.k.a. NIRUYIH INTIZAMIYEH JUMHURIYIH ISLAMIYIH IRAN) [SYRIA] [IRAN-HR] -to- LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN (a.k.a. IRANIAN POLICE; a.k.a. IRAN'S LAW ENFORCEMENT FORCES; a.k.a. NAJA; a.k.a. NIRUYIH INTIZAMIYEH JUMHURIYIH ISLAMIYIH IRAN) [SYRIA] [IRAN-HR] [HRIT-IR]

SYRIAN GENERAL INTELLIGENCE DIRECTORATE (a.k.a. IDERAT AL-AMN AL-'AMM), Syria [SYRIA] -to- SYRIAN GENERAL INTELLIGENCE DIRECTORATE (a.k.a. IDERAT AL-AMN AL-'AMM), Syria [SYRIA] [HRIT-SY]

SYRIATEL (a.k.a. SYRIATEL MOBILE; a.k.a. SYRIATEL MOBILE TELECOM; a.k.a. SYRIATEL MOBILE TELECOM SA), Doctors Syndicate Building, Al Jalaa Street, Abu Roumaneh Area, PO Box 2900, Damascus, Syria [SYRIA] -to- SYRIATEL (a.k.a. SYRIATEL MOBILE; a.k.a. SYRIATEL MOBILE TELECOM; a.k.a. SYRIATEL MOBILE TELECOM SA), Doctors Syndicate Building, Al Jalaa Street, Abu Roumaneh Area, PO Box 2900, Damascus, Syria [SYRIA] [HRIT-SY]

Dated: May 17, 2012.

Barbara C. Hammerle,

Deputy Director, Office of Foreign Assets Control.

[FR Doc. 2012–12535 Filed 5–23–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for the 2012 America the Beautiful Quarters Five Ounce Silver Uncirculated Coins™

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing the price of the 2012 America the Beautiful Quarters Five Ounce Silver Uncirculated Coins™.

The coins will be offered for sale at a price of $204.95.

FOR FURTHER INFORMATION CONTACT: B.B. Craig, Associate Director for Sales and Marketing, United States Mint, 801 9th Street NW., Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701.

Dated: May 18, 2012.

Richard A. Peterson,

Deputy Director, United States Mint.

[FR Doc. 2012–12566 Filed 5–23–12; 8:45 am]

BILLING CODE P

SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed priorities. Request for public comment.

SUMMARY: As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, and in accordance with Rule 5.2 of its Rules of Practice and Procedure, the United States Sentencing Commission is seeking comment on possible priority policy issues for the amendment cycle ending May 1, 2013.

DATES: Public comment should be received on or before July 23, 2012.

ADDRESSES: Send comments to: United States Sentencing Commission, One Columbus Circle NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs—Priorities Comment.

FOR FURTHER INFORMATION CONTACT: Jeanne Doherty, Office of Legislative and Public Affairs, 202–502–4502.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

The Commission provides this notice to identify tentative priorities for the amendment cycle ending May 1, 2013. The Commission recognizes, however, that other factors, such as the enactment of any legislation requiring Commission action, may affect the Commission's ability to complete work on any or all of its identified priorities by the statutory deadline of May 1, 2013. Accordingly, it may be necessary to continue work on any or all of these issues beyond the amendment cycle ending on May 1, 2013.

As so prefaced, the Commission has identified the following tentative priorities:

(1) Continuation of its work with Congress and other interested parties on statutory mandatory minimum penalties to implement the recommendations set forth in the Commission's 2011 report to Congress, titled *Mandatory Minimum Penalties in the Federal Criminal Justice System,* and to develop appropriate guideline amendments in response to any related legislation.

(2) Continuation of its work with the congressional, executive, and judicial branches of government, and other interested parties, to study the manner in which *United States* v. *Booker,* 543 U.S. 220 (2005), and subsequent Supreme Court decisions have affected federal sentencing practices, the appellate review of those practices, and the role of the federal sentencing guidelines. The Commission anticipates that it will issue a report with respect to its findings, possibly including (A) an evaluation of the impact of those decisions on the federal sentencing guideline system; (B) recommendations for legislation regarding federal sentencing policy; (C) an evaluation of the appellate standard of review applicable to post-*Booker* federal sentencing decisions; and (D) possible consideration of amendments to the federal sentencing guidelines. The Commission also intends to work with the judicial branch and other interested parties to develop enhanced methods for collecting and disseminating information and data about the use of variances and the specific reasons for imposition of such sentences under 18 U.S.C. 3553(a).

(3) Continuation of its review of child pornography offenses and report to Congress as a result of such review. It is anticipated that any such report would include (A) a review of the incidence of, and reasons for, departures and variances from the guideline sentence; (B) a compilation of studies on, and analysis of, recidivism by child pornography offenders; and (C) possible recommendations to Congress on any statutory and/or guideline changes that may be appropriate.

(4) Continuation of its work on economic crimes, including (A) a comprehensive, multi-year study of '2B1.1 (Theft, Property Destruction, and Fraud) and related guidelines, including examination of the loss table and the definition of loss, and (B) consideration of any amendments to such guidelines that may be appropriate in light of the information obtained from such study.

(5) Continuation of its multi-year study of the statutory and guideline definitions of ''crime of violence'', possibly including recommendations to Congress on any statutory changes that may be appropriate and development of guideline amendments that may be appropriate in response to any related legislation.

(6) Undertaking a comprehensive, multi-year study of recidivism, including (A) examination of circumstances that correlate with increased or reduced recidivism; (B) possible development of recommendations for using information obtained from such study to reduce costs of incarceration and overcapacity of prisons; and (C) consideration of any amendments to the *Guidelines Manual* that may be appropriate in light of the information obtained from such study.

(7) Resolution of circuit conflicts, pursuant to the Commission's continuing authority and responsibility, under 28 U.S.C. 991(b)(1)(B) and *Braxton* v. *United States,* 500 U.S. 344 (1991), to resolve conflicting interpretations of the guidelines by the federal courts.

(8) Implementation of any crime legislation enacted during the 111th or 112th Congress warranting a Commission response.

(9) Consideration of (A) whether any amendments to the *Guidelines Manual* may be appropriate in light of *Setser* v. *United States,* U.S. (March 28, 2012); and (B) any miscellaneous guideline application issues coming to the Commission's attention from case law and other sources.

The Commission hereby gives notice that it is seeking comment on these tentative priorities and on any other issues that interested persons believe the Commission should address during the amendment cycle ending May 1, 2013. To the extent practicable, public comment should include the following: (1) A statement of the issue, including, where appropriate, the scope and manner of study, particular problem areas and possible solutions, and any other matters relevant to a proposed priority; (2) citations to applicable sentencing guidelines, statutes, case law, and constitutional provisions; and (3) a direct and concise statement of why the Commission should make the issue a priority.

Authority: 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

Patti B. Saris,

Chair.

[FR Doc. 2012–12599 Filed 5–23–12; 8:45 am]

BILLING CODE 2210–40–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of period during which individuals may apply to be appointed to certain voting memberships of the Practitioners Advisory Group; request for applications.

SUMMARY: Because the terms of certain voting members of the Practitioners Advisory Group are expiring as of October 2012, the United States Sentencing Commission hereby invites any individual who is eligible to be appointed to succeed such a voting member to apply. The voting memberships covered by this notice are four circuit memberships (for the First Circuit, Fifth Circuit, Tenth Circuit, and Eleventh Circuit) and one at-large membership. Applications should be received by the Commission not later than July 23, 2012. Applications may be sent to the address listed below.

DATES: Applications for voting membership of the Practitioners Advisory Group should be received not later than July 23, 2012.

ADDRESSES: Send applications to: United States Sentencing Commission, One Columbus Circle NE., Suite 2–500,

South Lobby, Washington, DC 20002–8002, Attention: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Jeanne Doherty, Office of Legislative and Public Affairs, 202–502–4502.

SUPPLEMENTARY INFORMATION: The Practitioners Advisory Group of the United States Sentencing Commission is a standing advisory group of the United States Sentencing Commission pursuant to 28 U.S.C. 995 and Rule 5.4 of the Commission's Rules of Practice and Procedure. Under the charter for the advisory group, the purpose of the advisory group is (1) To assist the Commission in carrying out its statutory responsibilities under 28 U.S.C. 994(o); (2) to provide to the Commission its views on the Commission's activities and work, including proposed priorities and amendments; (3) to disseminate to defense attorneys, and to other professionals in the defense community, information regarding federal sentencing issues; and (4) to perform other related functions as the Commission requests. The advisory group consists of not more than 17 voting members, each of whom may serve not more than two consecutive three-year terms. Of those 17 voting members, one shall be Chair, one shall be Vice Chair, 12 shall be circuit members (one for each federal judicial circuit other than the Federal Circuit), and three shall be at-large members.

To be eligible to serve as a voting member, an individual must be an attorney who (1) Devotes a substantial portion of his or her professional work to advocating the interests of privately-represented individuals, or of individuals represented by private practitioners through appointment under the Criminal Justice Act of 1964, within the federal criminal justice system; (2) has significant experience with federal sentencing or post-conviction issues related to criminal sentences; and (3) is in good standing of the highest court of the jurisdiction or jurisdictions in which he or she is admitted to practice. Additionally, to be eligible to serve as a circuit member, the individual's primary place of business or a substantial portion of his or her practice must be in the circuit concerned. Each voting member is appointed by the Commission.

The Commission invites any individual who is eligible to be appointed to a voting membership covered by this notice to apply.

Authority: 28 U.S.C. 994(a), (o), (p), 995; USSC Rules of Practice and Procedure 5.2, 5.4.

Patti B. Saris,

Chair.

[FR Doc. 2012–12600 Filed 5–23–12; 8:45 am]

BILLING CODE 2210–40–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of period during which individuals may apply to be appointed to voting memberships of the Victims Advisory Group; request for applications.

SUMMARY: In view of existing vacancies in the membership of the Victims Advisory Group, as well as anticipated vacancies in the membership of the advisory group because the terms of certain members are expiring as of December 2012, the Commission hereby invites any individual who has knowledge, expertise, and/or experience in the area of federal crime victimization to apply to be appointed to the membership of the advisory group. Applications should be received by the Commission not later than July 23, 2012. Applications may be sent to the address listed below.

DATES: Applications for membership of the Victims Advisory Group should be received not later than July 23, 2012.

ADDRESSES: Send applications to: United States Sentencing Commission, One Columbus Circle NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Jeanne Doherty, Office of Legislative and Public Affairs, 202–502–4502.

SUPPLEMENTARY INFORMATION: The Victims Advisory Group of the United States Sentencing Commission is a standing advisory group of the United States Sentencing Commission pursuant to 28 U.S.C. 995 and Rule 5.4 of the Commission's Rules of Practice and Procedure. Under the charter for the advisory group, the purpose of the advisory group is (1) to assist the Commission in carrying out its statutory responsibilities under 28 U.S.C. 994(o); (2) to provide to the Commission its views on the Commission's activities and work, including proposed priorities and amendments, as they relate to victims of crime; (3) to disseminate information regarding sentencing issues to organizations represented by the Victims Advisory Group and to other victims of crime and victims advocacy groups, as appropriate; and (4) to perform any other functions related to victims of crime as the Commission requests. Under the charter, the advisory group consists of not more than nine members, each of whom may serve not more than two consecutive three-year terms. Each member is appointed by the Commission.

The Commission invites any individual who has knowledge, expertise, and/or experience in the area of federal crime victimization to apply to be appointed to the membership of the Victims Advisory Group.

Authority: 28 U.S.C. 994(a), (o), (p), § 995; USSC Rules of Practice and Procedure 5.2, 5.4.

Patti B. Saris,

Chair.

[FR Doc. 2012–12688 Filed 5–23–12; 8:45 am]

BILLING CODE 2210–40–P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on June 18–19, 2012, in room 109 at the Boston University Medical Campus, 80 East Concord Street, Boston, Massachusetts. The meeting will start at 8 a.m. each day and will adjourn at 5:30 p.m. on June 18, and at 1:30 p.m. on June 19. The meeting is open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Gulf War.

The Committee will review VA program activities related to Gulf War Veterans' illnesses and updates on relevant scientific research published since the last Committee meeting. The session on June 18 will be devoted to discussions of imaging techniques currently in use to treat Gulf War Veterans, exposures to organophosphates, and updates on VA Gulf War research initiatives. The research presentations on June 19 will

involve the immune system, magnetic resonance imaging, and alternative medical treatments (acupuncture, mindfulness, and Tai-Chi) for Gulf War Veterans. The session will also include discussion of Committee business and activities.

The meeting will include time reserved in the afternoon on both days for public comments. Public comments will be limited to five minutes each. A sign-up sheet will be made available for those who wish to speak and will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit a 1–2 page summary of their comments at the time of the meeting for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Dr. Victor Kalasinsky, Designated Federal Officer, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC, or by email at *victor.kalasinsky@va.gov.* Any member of the public seeking additional information should contact Dr. Kalasinsky at (202) 443–5682.

Dated: May 18, 2012.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2012–12574 Filed 5–23–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Clinical Science Research and Development Service Cooperative Studies Scientific Evaluation Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Clinical Science Research and Development Service Cooperative Studies Scientific Evaluation Committee will be held on July 12, 2012, at the Sheraton Suites Old Town Alexandria, 801 North Saint Asaph Street, Alexandria, VA. The meeting will begin at 8:30 a.m. and end at 2 p.m.

The Committee advises the Chief Research and Development Officer through the Director of the Clinical Science Research and Development Service on the relevance and feasibility of proposed projects and the scientific validity and propriety of technical details, including protection of human subjects.

The session will be open to the public for approximately 30 minutes at the start of the meeting for the discussion of administrative matters and the general status of the program. The remaining portion of the meeting will be closed to the public for the Committee's review, discussion and evaluation of research and development applications.

During the closed portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research proposals and similar documents and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. As provided by section 10(d) of Public Law 92–463, as amended, closing portions of this meeting is in accordance with 5 U.S.C. 552b(c)(6) and (c)(9)(B).

Those who plan to attend should contact Dr. Grant Huang, Deputy Director, Cooperative Studies Program (10P9CS), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, at (202) 443–5609 or by email at *grant.huang@va.gov.*

Dated: May 18, 2012.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2012–12522 Filed 5–23–12; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 77 Thursday,

No. 101 May 24, 2012

Part II

Consumer Product Safety Commission

16 CFR Parts 1112 and 1118

Audit Requirements for Third Party Conformity Assessment Bodies and Requirements Pertaining to Third Party Conformity Assessment Bodies; Final Rule and Proposed Rule

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1112

[CPSC Docket No. CPSC–2009–0061]

Audit Requirements for Third Party Conformity Assessment Bodies

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission (''CPSC,'' ''Commission,'' or ''we'') is issuing a final rule establishing requirements for the periodic audit of third party conformity assessment bodies as a condition of their continuing accreditation.

The final rule implements a section of the Consumer Product Safety Act (''CPSA''), as amended by the Consumer Product Safety Improvement Act of 2008 (''CPSIA'').

DATES: This rule is effective on July 23, 2012.

FOR FURTHER INFORMATION CONTACT: Randy Butturini, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; 301–504–7562; email: *RButturini@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of August 13, 2009 (74 FR 40784), we published a proposed rule that would establish requirements for the periodic audit of third party conformity assessment bodies as a condition of their continuing accreditation. The proposed rule would implement section 14(d)(1) of the CPSA, as amended by section 102(b) of the CPSIA. (On August 12, 2011, the President signed into law Public Law 112–28, which amended both the CPSA and the CPSIA. Section 10(a) of Public Law 112–28 redesignates what was identified as section 14(d) of the CPSA in the preamble of the proposed rule as section 14(i) of the CPSA; consequently, except where we are citing language from the proposed rule, the remainder of this document will refer to section 14(i) of the CPSA.)

Section 14(a)(1) of the CPSA (15 U.S.C. 2063(a)(1)) requires that the manufacturer (including the importer) and the private labeler, if any, of a product that is subject to an applicable consumer product safety rule under the CPSA, or any similar rule, ban, standard, or regulation under any other Act enforced by the CPSC, issue a certificate, which certifies ''based on a test of each product or upon a reasonable testing program, that such product complies with all rules, bans, standards, or regulations applicable to the product under this Act or any other Act enforced by the Commission'' and specifies each rule, ban, standard, or regulation applicable to the product. This requirement applies to any such product manufactured on or after November 12, 2008.

Section 14(a)(2) of the CPSA establishes a third party testing requirement for children's products that are subject to a children's product safety rule. In general, section 14(a)(2) of the CPSA states, in part, that every manufacturer or private labeler (if the children's product bears a private label) of such products shall submit sufficient samples of the product, or samples that are identical in all material respects to the product, to an accredited third party conformity assessment body to be tested for compliance with such children's product safety rule.

In the **Federal Register** of May 20, 2010 (75 FR 28336), we published a proposed rule that would establish the requirements for a reasonable testing program and for compliance and continued testing of children's products. In the **Federal Register** of November 8, 2011 (76 FR 69482), we published a final rule with respect to compliance and continued testing of children's products.

Section 14(a)(3) of the CPSA establishes various timelines for accreditation and requires the Commission to publish a notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity with specific laws or regulations. We have published several notices of requirements in the **Federal Register** (see, *e.g.,* 76 FR 49286 (August 10, 2011) (''Third Party Testing for Certain Children's Products; Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity with the Limits on Phthalates in Children's Toys and Child Care Articles,''); 76 FR 46598 (August 3, 2011) (''Third Party Testing for Certain Children's Products; Toys: Requirements for Accreditation of Third Party Conformity Assessment Bodies'')). Section 14(a)(3)(C) of the CPSA states that accreditation of third party conformity assessment bodies may be conducted by the Commission or by an independent accreditation organization designated by the Commission.

Section 14(i)(1) of the CPSA requires the Commission to establish ''requirements for the periodic audit of third party conformity assessment bodies as a condition for the continuing accreditation of such conformity assessment bodies'' under section 14(a)(3)(C) of the CPSA. This final rule implements section 14(i)(1) of the CPSA.

II. Comments on the Proposed Rule, the CPSC's Responses, and a Description of the Final Rule

The proposed rule would create a new part 1112, titled, ''Audit Requirements for Third Party Conformity Assessment Bodies,'' in Title 16 of the Code of Federal Regulations. Six commenters responded to the proposal.

We describe and respond to the comments in this section of this document and also describe the final rule. 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.

A. Comments on Specific Provisions

Most commenters addressed specific sections in the proposed rule, or referenced issues associated with a particular term in a proposed section, but not directly relevant to the proposed section itself. We address those comments in this section. However, on our own initiative, we have renumbered the sections and renamed the part in which the sections will be placed. For example, proposed § 1112.1, titled, ''Purpose,'' is now renumbered as § 1112.20. As another example, the proposed rule would have created a part 1112, titled, ''Audit Requirements for Third Party Conformity Assessment Bodies''; however, the final rule divides the audit requirements into two subparts and renames part 1112, ''Requirements Pertaining to Third Party Conformity Assessment Bodies.'' We have taken this action because, elsewhere in this issue of the **Federal Register**, we have published a proposed rule to establish other requirements pertaining to third party conformity assessment bodies (such as the requirements for accreditation and provisions for the withdrawal and suspension of third party conformity assessment bodies) and wish to place all requirements for third party conformity assessment bodies in a single location. This will make it easier for interested

parties to locate the regulations pertaining to third party conformity assessment bodies.

1. § 1112.30—Purpose

Proposed § 1112.1 (now renumbered as § 1112.30 in the final rule) would describe the purpose of the audit rule. In brief, proposed § 1112.1 would state that part 1112 ''establishes the audit requirements for third party conformity assessment bodies pursuant to section 14(d)(1) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2063(d)(1)).'' Under section 14(i)(1) of the CPSA, compliance with the requirements in part 1112 would be a condition of continuing the accreditation of such third party conformity assessment bodies.

(Comment 1)—One commenter noted that the proposal referred to certifying organizations under the Labeling of Hazardous Art Materials Act (LHAMA). The commenter stated that art and craft companies cannot afford both LHAMA and what the commenter called ''redundant'' testing under the CPSIA. The commenter said that retailers that do not recognize the Art and Creative Materials Institute (ACMI) as a third party conformity assessment body are demanding additional tests. The commenter said the CPSC should consider the acceptance of current certification programs, such as ACMI's, to be in full compliance with the CPSIA.

(Response 1)—Although issues related to product testing are outside the scope of the audit rule, the commenter may have misinterpreted the statute and the proposed rule's reference to certifying organizations under LHAMA. Section 14(f)(2)(C) of the CPSA states that certifying organizations, as defined in appendix A to 16 CFR 500.14(b)(8), are third party conformity assessment bodies with respect to certifying art materials and art products to Federal Hazardous Substances Act (FHSA) requirements. Current certification programs, such as ACMI's, are for certifying to LHAMA rules. Section 14 of the CPSA, however, also requires children's products to be tested for compliance to children's product safety rules; and it defines ''children's product safety rules'' as ''a consumer product safety rule under [the CPSA] or similar rule, regulation, standard, or ban under any other Act enforced by the Commission, including a rule declaring a consumer product to be a banned hazardous product or substance.'' Thus, because the definition of ''children's product safety rule'' is broader than certification of art materials and art products to FHSA requirements, testing under section 14 of the CPSA is not ''redundant'' to LHAMA certification.

Therefore, the final rule retains the text of the ''Purpose'' section, although we have replaced ''part,'' with ''subpart,'' to reflect that the audit requirements are now subpart C of part 1112. Additionally, on our own initiative, we have:

- Changed the title from ''Purpose,'' to ''What Is the Purpose of this Subpart?'' to be consistent with the style used for other headings in the final rule;
- Revised the second sentence stating that ''Compliance with these requirements is condition for the continuing accreditation * * *'' to ''Compliance with these requirements is a condition of the continuing accreditation * * *''; and
- Revised the third sentence by inserting a comma between ''Labeling of Hazardous Art Materials Act'' and ''even.''

These changes are not substantive, and the latter two changes were made for grammatical purposes.

2. Subpart A—Purpose and Definitions

Proposed § 1112.3 would define various terms used in part 1112. The final rule now places all definitions in § 1112.3 in subpart A, ''Purpose and Definitions.''

a. Accreditation

Proposed § 1112.3(a) would define ''accreditation'' as:

A procedure by which an authoritative body gives formal recognition that a third party conformity assessment body is competent to perform specific tasks. Accreditation recognizes a third party conformity assessment body's technical competence and is usually specific for tests of the systems, products, components, or materials for which the third party conformity assessment body claims proficiency.

The preamble to the proposed rule explained that the definition was based on a description used by the International Organization for Standardization (ISO) in relation to ISO Standard ISO/IEC 17025:2005, ''General Requirements for the Competence of Testing and Calibration Laboratories,'' except that it uses the term ''third party conformity assessment body,'' instead of ''lab,'' and refers to ''technical competence,'' instead of ''technical capability'' (see 74 FR at 40785). We explained that the term ''third party conformity assessment body'' is used in section 14(a)(3)(C) of the CPSA, and that we were aware that ISO/IEC 17025:2005, by reference, incorporates the definitions set forth in ISO/IEC 17000:2004, ''Conformity Assessment—Vocabulary and General Principles,'' but we decided against adopting the definition of ''accreditation'' in ISO/IEC 17000 because it incorporates several other definitions by implied reference.

(Comment 2)—One commenter would revise the first sentence of the definition to define ''accreditation'' as: ''A procedure by which an authoritative body gives formal recognition that a third party conformity assessment body meets competence requirements to perform specific tasks.'' The commenter explained that accreditation is ''not a subjective assessment of competence based on whatever the individual assessors think is important, but rather is a requirements-based activity.''

(Response 2)—We agree with the commenter, and we have revised the definition accordingly.

Additionally, on our own initiative, we have revised the numbering in § 1112.3, generally, to eliminate the paragraph designations before each defined term. We removed the paragraph designations to be more consistent with accepted formats for regulations.

(Comment 3)—One commenter suggested revising the definition of ''accreditation'' to ''meet the international requirement,'' but they did not explain what is meant by ''the international requirement.''

(Response 3)—For purposes of this response, we assume that the commenter's reference to ''international requirement'' means the definitions used in ISO/IEC 17000:2004, ''Conformity Assessment—Vocabulary and General Principles.'' Section 5.5 of ISO/IEC 17000: 2004 defines ''accreditation'' as ''third party attestation (5.2) related to a conformity assessment body (2.5) conveying a formal demonstration of its competence to carry out specific conformity assessment tasks.'' As we explained in the preamble to the proposed rule, ISO/IEC's definition of ''accreditation'' incorporates several other definitions by implied reference; therefore, we chose to adopt a more detailed definition of the term, rather than adopt a definition from ISO/IEC 17000, whose terms would compel the reader to consult even more definitions before they could understand how the rule defines ''accreditation'' (*see* 74 FR at 40785).

Alternatively, because the commenter also discussed requiring reciprocity, it is possible that they meant to suggest that we amend the definition of ''accreditation'' to include a reciprocity requirement. As discussed later in part II.B of this preamble in the response to

Comment 12, a reciprocity requirement is beyond the scope of this rule.

Consequently, we decline to revise the definition as suggested by the commenter.

(Comment 4)—Another commenter stated that ISO/IEC 17025:2005 and ISO 17000:2004 have definitions that are the result of a consensus and are ''universally accepted and understood.'' The commenter said that the proposal's use of different definitions or modification of ISO definitions ''will create unnecessary problems in the process of accreditation and audits and should be avoided.''

(Response 4)—As the preamble to the proposed rule explained (*see* 74 FR at 40785), in the definition of ''accreditation,'' we chose to substitute the term ''third party conformity assessment body'' instead of ''lab'' to be consistent with the language in section 14(a)(3)(C) of the CPSA. The preamble to the proposed rule explained other differences between the proposed definitions and ISO/IEC 17025:2005 and ISO 17000:2004; for example, we chose to define some terms to be consistent with notices of requirements issued by the Commission, while other definitions are almost identical to the corresponding ISO definition (*id.* at 40785 through 40786).

Furthermore, because the commenter did not identify how any proposed definition would cause ''unnecessary problems,'' we decline to revise the rule as suggested by the commenter.

b. Accreditation Body

Proposed § 1112.3(b) would define ''accreditation body'' as ''an entity that accredits or has accredited a third party conformity assessment body as meeting, at a minimum, the International Organization for Standardization (ISO) Standard ISO/IEC 17025:2005, 'General Requirements for the Competence of Testing and Calibration Laboratories,' '' and any test methods or consumer product safety requirements specified in the relevant notice of requirements issued by the Commission, and is a signatory to the International Laboratory Accreditation Cooperation–Mutual Recognition Arrangement. The preamble to the proposed rule explained that the proposed definition of ''accreditation body'' reflects the basic elements that the Commission has specified in its notices of requirements for the accreditation of third party conformity assessment bodies. The preamble also explained that the phrase ''at a minimum'' recognizes that some accreditation bodies, as part of the accreditation process, may demand that a third party conformity assessment body demonstrate its conformity with specific methods or programs, as well as demonstrate compliance with ISO/IEC 17025:2005 and with any test methods identified in the relevant notices of requirements issued by the Commission.

(Comment 5)—Several commenters addressed issues relating to ISO/IEC 17025:2005 rather than the definition itself.

One commenter said that ISO/IEC 17025:2005 is a ''good baseline,'' but nevertheless, asserted that the CPSC should create a mechanism to supervise and control the acceptance of government-owned or government-controlled conformity assessment bodies and firewalled conformity assessment bodies to help ensure their protection against undue influence. (A firewalled conformity assessment body is one that is owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the conformity assessment body for certification purposes and that seeks accreditation under the additional statutory criteria for ''firewalled'' conformity assessment bodies.)

(Response 5)—Although the commenter's focus on issues of undue influence goes beyond the scope of the rule, we note that the statutory accreditation requirements pertaining to undue influence and government-owned, government-controlled, and firewalled conformity assessment bodies exceed those of ISO/IEC 17025:2005. Section 14(f)(2)(D) of the CPSA requires firewalled conformity assessment bodies to have procedures to ensure that test results are protected from undue influence by the manufacturer, private labeler, or other interested party. Conformity assessment bodies that apply for CPSC approval as firewalled laboratories must submit to the Commission copies of their training documents, showing how employees are trained to notify the Commission immediately and confidentially of any attempt by the manufacturer, private labeler, or other interested party to hide or exert undue influence over the third party conformity assessment body's test results.

For governmental laboratory applicants, CPSC staff engages the governmental entities relevant to requests for CPSC acceptance to obtain the necessary assurances of compliance with the statutory requirements for governmental conformity assessment bodies (laboratories). Section 14(f)(2)(B) of the CPSA requires that governmental-owned or controlled conformity assessment bodies may apply for CPSC recognition of their accreditation and be subject to the audit provisions, if, among other requirements:

- The conformity assessment body's testing results are not subject to undue influence by any other person, including another governmental entity; and
- The conformity assessment body does not exercise undue influence over other governmental authorities controlling distribution of products based on outcomes of the conformity assessment body's conformity assessments.

Thus, the final rule retains the definition of ''accreditation body'' without change, except that, on our own initiative, we have inserted ''/International Electrotechnical Commission (IEC)'' after ''International Organization for Standardization (ISO)'' to provide the full name corresponding to the abbreviation ''IEC''; and we added '':2005'' after ''17025'' to identify the particular edition of the standard. We address the process for initially accepting government and firewalled laboratories in the proposed rule on ''Requirements Pertaining to Third Party Conformity Assessment Bodies.''

(Comment 6)—One commenter said that there are substantial differences among accreditation bodies. In some cases, the conformity assessment body and the accreditation body are both government-controlled. The commenter added that H.R. 2749, titled, the ''Food Safety Enhancement Act of 2009,'' has stricter requirements for firewalled conformity assessment bodies, including a restriction on such laboratories certifying their own products. The commenter suggested that the CPSC designate individual accreditation bodies based on specific criteria to prove their competency with CPSC requirements.

(Response 6)—The Commission, through its notices of requirements, has required all third party conformity assessment bodies to be accredited by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation-Mutual Recognition Arrangement (ILAC–MRA) and further mandated that the scope of the accreditation include testing relative to the appropriate test method(s) or regulation(s) cited in the notice of requirements. All ILAC–MRA accreditation bodies must maintain conformity with the current version of ISO/IEC 17011 and related ILAC guidance documents and ensure that all accredited laboratories comply with ISO/IEC 17025:2005 and applicable ILAC policy and guidance documents. This ensures some degree of similarity

or uniformity among accreditation bodies, regardless of their geographical location, and it also ensures consistency among third party conformity assessment bodies accredited by such ILAC–MRA accreditation bodies. Requiring specific criteria of accreditation bodies is beyond the scope of the requirements for auditing conformity assessment bodies.

As for the Food Safety Enhancement Act of 2009, it would restrict testing laboratories' certification activities. However, under section 14 of the CPSA and CPSC regulations at 16 CFR part 1110, third party conformity assessment bodies do not issue certifications; accordingly, the bill's potential requirements are not directly relevant here. Additionally, nothing in section 14 of the CPSA prohibits firewalled conformity assessment bodies from testing a manufacturer's own products.

c. Audit

Proposed § 1112.3(c) would define ''audit'' as ''a systematic, independent, documented process for obtaining records, statements of fact, or other relevant information, and assessing them objectively to determine the extent to which specified requirements are fulfilled.'' The preamble to the proposed rule (74 FR at 40785) explained that this definition is almost identical to the definition of ''audit'' in ISO/IEC 17000. Proposed § 1112.3(c) also would explain that, for purposes of part 1112, an audit consists of two parts: (1) An examination by an accreditation body to determine whether the third party conformity assessment body meets or continues to meet the conditions for accreditation (a process known more commonly as a ''reassessment,'' and that the remainder of this preamble will refer to as a ''reassessment''); and (2) the resubmission of the ''Consumer Product Conformity Assessment Body Acceptance Registration Form'' (CPSC Form 223) by the third party conformity assessment body and the CPSC's examination of the resubmitted CPSC Form 223 (that the remainder of this preamble will refer to as an ''examination'' by the CPSC).

We received no comments on the proposed definition. However, on our own initiative, we have revised the phrase, ''is composed of two parts,'' to read ''consists of two parts.'' This change is for grammatical purposes only. Additionally, as stated earlier in part II.A of this preamble in the response to Comment 2, we have removed the paragraph designation; thus, the definition of ''audit'' is now at § 1112.3 of the final rule rather than at § 1112.3(c) (as proposed).

d. Commission

Proposed § 1112.3(d) would define ''Commission'' to mean the Consumer Product Safety Commission.

We received no comments on this provision, and therefore, other than removing the paragraph designation (*i.e.,* removing ''(d)'' before the definition of ''Commission'' appears), we have finalized the provision without change.

e. Quality Manager

Proposed § 1112.3(e) would define ''quality manager'' as an individual ''(however named) who, irrespective of other duties and responsibilities, has defined responsibility and authority for ensuring that the management system related to quality is implemented and followed at all times and who has direct access to the highest level of management at which decisions are made on the conformity assessment body's policy or resources.'' The preamble to the proposed rule explained that this definition is patterned after the explanation of the quality manager's role in ISO/IEC 17025:2005, section 4.1.5 (74 FR at 40786).

We received no comments on this provision, and therefore, other than removing the paragraph designation, we have finalized the provision without change.

f. Use of Statutory Definitions

Proposed § 1112.3(f) would explain that, unless otherwise stated, the definitions of section 3 of the CPSA, and additional definitions in the CPSIA, are applicable for purposes of part 1112 of this title. Thus, for example, the CPSIA's definition of ''third party conformity assessment body,'' which includes independent conformity assessment bodies, government-owned or government-controlled conformity assessment bodies (subject to certain requirements in section 14(f)(2)(B) of the CPSA), and ''firewalled'' conformity assessment bodies (subject to certain requirements in section 14(f)(2)(D) of the CPSA), would apply to part 1112; and the term ''third party conformity assessment body'' in part 1112 would be understood to include all three types of conformity assessment bodies.

(Comment 7)—One commenter stated that referring to firewalled and government-owned or government-controlled conformity assessment bodies as ''third party conformity assessment bodies'' misuses a term with a specific definition. The commenter said that there are differences in how conformity assessment bodies operate and opined further that the CPSC ''needs to address those differences, not only in their accreditation requirements, but also in their audit requirements.''

(Response 7)—Although the commenter did not identify a particular provision, we assume that the commenter was addressing part of the preamble to the proposed rule in which the Commission explained that under proposed § 1112.3(f), ''unless otherwise stated, the definitions of section 3 of the CPSA and additional definitions in the CPSIA apply for purposes of part 1112 of this title'' (*see* 74 FR at 40786). The preamble to the proposed rule added: ''Thus, for example, the CPSIA's definition of 'third party conformity assessment body,' which includes independent conformity assessment bodies, government-owned or government-controlled conformity assessment bodies (subject to certain requirements in section 14(f)(2)(B) of the CPSA), and 'firewalled' conformity assessment bodies (subject to certain requirements in section 14(f)(2)(D) of the CPSA), would apply to part 1112, and the term 'third party conformity assessment body' in part 1112 would be understood as including all three types of conformity assessment bodies'' (*id.*).

Thus, with respect to the definition of ''third party conformity assessment body,'' the preamble to the proposed rule was referring to the section 14(f)(2) of the CPSA. Because the statute considers government-owned or government-controlled conformity assessment bodies and firewalled conformity assessment bodies to fall under ''third party conformity assessment body'' in section 14(f)(2) of the CPSA, we decline to revise the rule as suggested by the comment.

As for establishing different accreditation requirements, sections 14(f)(2)(B) and (f)(2)(D) of the CPSA already establish different requirements for government-owned or government-controlled conformity assessment bodies and firewalled conformity assessment bodies. Furthermore, the Commission, through its notices of requirements for the accreditation of third party conformity assessment bodies, establishes accreditation requirements. Thus, the commenter's request for different accreditation requirements is outside the scope of this rule.

With respect to different audit requirements, the commenter did not suggest any changes to the rule that would apply to government-owned, government-controlled, or firewalled conformity assessment bodies. Consequently, we have no basis to establish different audit requirements

for different types of third party conformity assessment bodies.

3. § 1112.31—Who is subject to these audit requirements?

Proposed § 1112.5 (now renumbered as § 1112.31 in the final rule) would explain that the requirements in part 1112 apply to third party conformity assessment bodies operating pursuant to section 14(a)(2) of the CPSA, and it would reiterate that third party conformity assessment bodies must comply with the audit requirements as a condition of the Commission's acceptance of their accreditation.

We received no comments on this provision, and other than to renumber it, we have finalized the provision without change.

4. § 1112.33—What must an audit address or cover? Who conducts the audit?

Proposed § 1112.3(c) would explain that, for purposes of part 1112, an audit consists of two parts: (1) An examination by an accreditation body to determine whether the third party conformity assessment body meets or continues to meet the conditions for accreditation (the ''reassessment'' portion of the audit); and (2) the resubmission of the ''Consumer Product Conformity Assessment Body Acceptance Registration Form'' (CPSC Form 223) by the third party conformity assessment body and the CPSC's examination of the resubmitted CPSC Form 223. If the third party conformity assessment body is a ''firewalled'' conformity assessment body or a government-owned or government-controlled conformity assessment body, the CPSC's examination may include verification to ensure that the entity continues to meet the appropriate statutory criteria pertaining to such conformity assessment bodies.

a. § 1112.33(a)—What does the reassessment portion of the audit cover?

Under proposed § 1112.7(a) (now renumbered as § 1112.33(a) in the final rule), the reassessment portion of the audit may cover the management systems, specific tests, types of tests, calibrations, or types of calibrations that are the subject of the third party conformity assessment body's accreditation. The proposal also stated that the reassessment portion must examine the third party conformity assessment body's management systems to ensure that the third party conformity assessment body is free from any undue influence regarding its technical judgment.

(Comment 8)—One commenter noted that the text might be interpreted to require that only the management system from ISO/IEC 17025:2005 be met. The commenter said that we should require applicants to fulfill all requirements in ISO/IEC 17025:2005 rather than the management requirements.

(Response 8)—We interpret the commenter as referring to the preamble to the proposed rule (74 FR at 40786), which states that ''Under proposed § 1112.7(a), the reassessment portion of the audit may cover the management systems, specific tests * * *.'' and referencing proposed § 1112.7(a), which also uses the word ''may.''

During the reassessment portion of the audit, the accreditation body examines the competence of the entire operation of the conformity assessment body, including the competence of the personnel, the validity of the conformity assessment methodology, and the validity of the conformity assessment results. We agree with the commenter that the use of the word ''may'' in these sections could be misinterpreted as not requiring compliance by the conformity assessment body with all sections of ISO/IEC 17025:2005, and the proposed rule was not intended to suggest that the reassessment could be limited to management systems alone. To the contrary, the proposal's mention of ''specific tests, types of tests, calibrations, or types of calibrations'' was to show that a reassessment extends to technical requirements too. Consequently, we have revised § 1112.33(a) to state that the reassessment portion of an audit of a conformity assessment body by an accreditation body covers management requirements and technical requirements. The remainder of § 1123.33(a), pertaining to examination of the third party conformity assessment body's management systems, is unchanged.

(Comment 9)—Several commenters said that because products must be certified as being in compliance, the principles for impartiality and undue influence need to come from ISO/IEC Guide 65, *General Requirements for Bodies Operating Product Certification Systems,* which is a standard for certifying bodies. One commenter said that ISO/IEC Guide 65 is important especially for firewalled and government conformity assessment bodies. Additionally, the commenter said that the CPSC should require ''applicants'' to submit evidence of fulfillment of ISO/IEC 17025:2005 section 4.1.5.b. as part of their application to the CPSC, both initially and with ongoing audits. The commenter said that this information is needed in addition to current firewalled training and that applicants need to be able to notify the Commission about undue influence. Further, ISO/IEC Guide 65 has several requirements to protect impartiality and conflict of interest, the commenter noted.

One commenter added that the Occupation Safety and Health Administration (OSHA) has a National Recognized Testing Laboratory (NRTL) program that uses ISO/IEC Guide 65's requirements to review a laboratory's independence. Rigorous evaluation of the independence of a laboratory should be required annually or at least with surveillance and reassessment visits, the commenter urged.

Another commenter remarked that OSHA's NRTL and the U.S. Federal Communications Commission's (FCC's) Telecommunications Body Certification (TBC) programs could be used as sources.

Another commenter suggested that we consider the principles of product certification outlined in the American National Standards Institute document, titled, ''National Conformity Assessment Principles for the United States.'' The commenter said that manufacturer certification based on testing by laboratories accredited to ISO/IEC 17025:2005 can ensure that a product conforms to a required standard at the time of testing, but it ''does not ensure that the product continues to conform to the standard throughout production and distribution.''

(Response 9)—The commenters may have misinterpreted the rule. Conformity assessment bodies test products, whereas domestic manufacturers and importers are responsible for certifying that their products comply with all rules, bans, standards, or regulations under the CPSA or any other Act enforced by the Commission under existing CPSC regulations at 16 CFR part 1110. Consequently, with respect to the comment regarding ISO/IEC Guide 65, we note that ISO/IEC Guide 65 provides requirements for certification bodies, which have different requirements and responsibilities than third party conformity assessment bodies (which, under section 14 of the CPSA and our regulations at 16 CFR part 1110, test children's products but do not issue certificates for such products), including attestations of conformity and surveillance activities. The requirements to protect impartiality and conflict of interest in ISO/IEC Guide 65 are tailored toward those functions.

As for the suggestion that a conformity assessment body submit evidence of its fulfillment of ISO/IEC 17025:2005 section 4.1.5.b. as part of its application to the CPSC, both initially and with ongoing audits, section 102(c) of the CPSIA states that in establishing standards for accreditation of a third party conformity assessment body, the Commission may consider standards and protocols for accreditation of such conformity assessment bodies by independent accreditation organizations that are in effect on the date of enactment (August 14, 2008). Accreditation of third party conformity assessment bodies may be conducted either by the Commission or by an independent accreditation organization designated by the Commission. In our notices of requirements for the accreditation of third party conformity assessment bodies, we have established accreditation to ISO/IEC 17025:2005, with the accreditation conducted by an accreditation body that is a signatory to the ILAC–MRA as a baseline requirement for accreditation. Thus, we have designated accreditation organizations (accreditation bodies) to conduct accreditation of third party conformity assessment bodies. Records related to accreditation assessments and reassessments are maintained by the accreditation bodies and the third party conformity assessment bodies.

Consequently, the commenter's suggestion regarding evidence of a third party conformity assessment body's fulfillment of ISO/IEC 17025:2005 requirements is unnecessary because § 1112.39 requires a third party conformity assessment body to retain records related to the last three reassessments conducted by the accreditation body and make such records available to the CPSC upon request. Records of nonconformities related to safeguards against undue influence (or any ISO/IEC 17025:2005 requirement), as well as the corrective actions, must be made available upon the CPSC's request.

In addition, § 1112.37 requires the quality manager at the third party conformity assessment body to notify the CPSC within five business days of an accreditation body's notification of suspension, reduction, or withdrawal of accreditation. Failure to do so may lead to CPSC withdrawal of the laboratory as a CPSC-recognized third party conformity assessment body.

As for the comment regarding a product's continued conformity to standards throughout the product's production and distribution, such matters are outside the scope of this audit rule; instead, they are addressed in a separate rulemaking pertaining to ''Testing and Labeling Pertaining to Product Certification'' (75 FR 28336 (May 20, 2010); 76 FR 69482 (November 8, 2011)).

b. § 1112.33(b)—Who conducts the reassessment portion of the audit?

Proposed § 1112.7(b) (now renumbered as § 1112.33(b) in the final rule) would require the third party conformity assessment body to have the accreditation body that accredited the third party conformity assessment body perform the reassessment portion of the audit. For example, if a third party conformity assessment body was accredited for a particular scope by an accreditation body named AB–1, then AB–1 would conduct the reassessment. If, however, the same third party conformity assessment body changes its accreditation for the same scope, such that it becomes accredited by a different accreditation body, named AB–2, then AB–2 would conduct the reassessment.

The preamble to the proposed rule also suggested that accreditation bodies performing reassessments conform to ISO/IEC 17011 titled, ''Conformity Assessment—General Requirements for Accreditation Bodies Accrediting Conformity Assessment Bodies'' (74 FR at 40787). The preamble to the proposed rule stated that certain provisions in ISO/IEC 17011, notably sections 7.11, ''Reassessment and Surveillance''; 7.12, ''Extending Accreditation''; and 7.13, ''Suspending, Withdrawing, or Reducing Accreditation,'' may be relevant, particularly when conducting a reassessment (*id.*).

(Comment 10)—One commenter stated that only a fraction of the many tests which a conformity assessment body may be accredited to perform actually are examined during any single reassessment. The commenter said it is up to the accreditation body performing the reassessment to decide which tests to undertake. In addition, the commenter asked whether a conformity assessment body must insist that the accreditation body reassess every two years all CPSC tests to which the conformity assessment body is accredited.

(Response 10)—The commenter may have confused reassessment with surveillance. ISO/IEC 17011 defines ''assessment'' as ''a process undertaken by an accreditation body to assess the competence of a conformity assessment body, based on particular standard(s) and/or other normative documents and for a defined scope of accreditation.'' (See ISO/IEC 17011:2004, *Conformity assessment—General requirements for accreditation bodies accrediting conformity assessment bodies,* at section 3.7.) Assessing the competence of a conformity assessment body involves assessing the competence of all conformity assessment body operations, including (among other things) the competence of the personnel, the validity of the conformity assessment methodology, and the validity of the conformity assessment results. Reassessment is described as similar to an initial assessment, except that experience gained during previous assessments shall be taken into account. (*Id.* at section 7.11.1.) The outcome of these different approaches is the same in that the accreditation body must demonstrate that it has assessed adequately each of the third party conformity assessment body's competencies (including technical and management systems competencies) over the reassessment period.

''Surveillance'' is defined as ''a set of activities, except reassessment, to monitor the continued fulfillment by accredited CABs of requirements for accreditation'' (*id.* at section 3.18). Typically, surveillance consists of a subset of the reassessment activities, and it is conducted between reassessments.

We note that, on our own initiative, we have revised the last sentence in § 1112.33(b), by inserting a comma between ''changes it accreditation'' and ''so that it becomes accredited. * * *'' This change is for grammatical purposes.

c. § 1112.33(c)—What is the examination portion of the audit?

As for the examination portion of the audit, proposed § 1112.7(c) (now renumbered as § 1112.33(c) in the final rule) would explain that the third party conformity assessment body must have the examination portion of the audit conducted by the Commission. The examination portion of the audit would consist of resubmission of CPSC Form 223 by the third party conformity assessment body to the CPSC and the CPSC's examination of the resubmitted form. Resubmission of the CPSC Form 223 would occur in two ways: (1) There would be a continuing obligation to ensure that the information submitted on CPSC Form 223 is current, such that a third party conformity assessment body would submit a new CPSC Form 223 whenever the information changes; and (2) In the absence of any changes that would necessitate the submission of a new CPSC Form 223, the third party conformity assessment body would reregister at the CPSC every 2 years, using CPSC Form 223.

Additionally, proposed § 1112.7(c) would contain specific requirements for the CPSC's examination of ''firewalled'' and government-owned or government-controlled conformity assessment bodies. For ''firewalled'' conformity assessment bodies, proposed § 1112.7(c)(1) would state that the examination portion of the audit conducted by the CPSC may include verification to ensure that the ''firewalled'' conformity assessment body continues to meet the criteria set forth in section 14(f)(2)(D) of the CPSA. Thus, for example, under proposed § 1112.7(c)(1), we could examine whether a ''firewalled'' conformity assessment body's established procedures continue to exist; and likewise, it could review its mechanisms for confidential reporting of allegations of undue influence. For government-owned or government-controlled conformity assessment bodies, proposed § 1112.7(c)(2) would state that the examination portion of the audit conducted by the CPSC may include verification that the government-owned or government-controlled conformity assessment body continues to meet the five criteria set forth in section 14(f)(2)(B) of the CPSA. Thus, for example, under proposed § 1112.7(c)(2), the CPSC could examine whether a government-owned conformity assessment body has procedures in place to ensure that its testing results are not subject to undue influence by any other person.

We received no comments on this provision, and aside from renumbering it as § 1112.33(c), we finalized the provision without change. Elsewhere in this issue of the **Federal Register**, however, we have published a proposed rule to establish other requirements pertaining to third party conformity assessment bodies (such as the requirements for accreditation and provisions for the withdrawal and suspension of third party conformity assessment bodies). The proposed rule would establish different requirements on the resubmission of CPSC Form 223, by asking for additional documentation to support CPSC Form 223.

5. § 1112.35—When must an audit be conducted?

Proposed § 1112.9(a) (now renumbered as § 1112.35 in the final rule) would state that, at a minimum, each third party conformity assessment body must be reassessed at the frequency established by its accreditation body for reassessments of the accreditation. For example, if the accreditation body would conduct a reassessment to reexamine a third party conformity assessment body's accreditation after 2 years, the minimum reassessment frequency for that third party conformity assessment body would be 2 years.

As for the examination portion of the audit conducted by the CPSC, proposed § 1112.9(b)(1) would require each third party conformity assessment body to ensure that the information it submitted on CPSC Form 223 is current and submit a new CPSC Form 223 whenever the information, such as the third party conformity assessment body's address, telephone number, or ownership, changes. In the absence of any changes that would necessitate the submission of a new CPSC Form 223, proposed § 1112.9(b)(2) would require the third party conformity assessment body to reregister at the CPSC every 2 years, using CPSC Form 223.

On our own initiative, we have decided against issuing a final rule regarding the timing of the examination portion of the audit. After the publication of the proposed rule in the **Federal Register** on August 13, 2009, we have acquired more experience registering third party conformity assessment bodies and have made modifications to CPSC software, as well as to CPSC Form 223. This combination of experience and the modifications to the CPSC's registration system have prompted us to reconsider when the examination portion of an audit should be conducted. Elsewhere in this issue of the **Federal Register**, we have published a proposed rule to establish other requirements pertaining to third party conformity assessment bodies; the proposed rule contains a new provision regarding the timing of the examination portion of the audit; and we believe that the new proposed provision is clearer and easier to implement. Therefore, rather than codify when the examination portion of an audit must be conducted, the final rule reserves § 1112.35(b).

6. § 1112.37—What must a third party conformity assessment body do after an audit?

In general, once the accreditation body has conducted its reassessment of a third party conformity assessment body, the accreditation body will present its initial findings, along with any supporting evidence, to the quality manager for the third party conformity assessment body. The accreditation body may give the third party conformity assessment body's personnel the opportunity to present any objections they have to the initial findings. The accreditation body may adjust its findings in response to any valid objections.

When the accreditation body presents its findings to the third party conformity assessment body, proposed § 1112.11(a) would require the third party conformity assessment body's quality manager to receive the findings and, if necessary, initiate corrective action in response to the findings. Proposed § 1112.11(b) would require the quality manager to prepare a resolution report; the resolution report would identify the corrective actions taken and any follow-up activities. If immediate corrective action is necessary (as may be the case if the findings identify problems associated with incorrect procedures, invalid actions, or the creation or use of invalid data), proposed § 1112.11(b) would require the quality manager to document that they notified the relevant parties within the third party conformity assessment body to take immediate corrective action and also to document the action(s) taken.

Proposed § 1112.11(c) would require the quality manager to notify the CPSC if the accreditation body decides to reduce, suspend, or withdraw the third party conformity assessment body's accreditation and the reduction, suspension, or withdrawal of accreditation is relevant to the third party conformity assessment body's activities pertaining to a CPSC regulation or test method. The notification would be sent to the Assistant Executive Director, Office of Hazard Identification and Reduction, within five business days of the accreditation body's notification to the third party conformity assessment body. If a third party conformity assessment body does not notify the CPSC in the manner that proposed § 1112.11(c) would require, then such noncompliance may be grounds for withdrawal of acceptance of the accreditation by the Commission under section 14(e)(1)(B) of the CPSA for failure to ''comply with an applicable protocol, standard, or requirement established by the Commission'' under the audit regulations.

Proposed § 1112.11(d) would explain that the CPSC will notify the third party conformity assessment body if the CPSC finds that the third party conformity assessment body no longer meets the conditions contained in CPSC Form 223 or in the relevant statutory provisions applicable to that third party conformity assessment body. The CPSC also will identify the condition or statutory provision that is no longer met, specify a time by which the third party conformity assessment body must notify the CPSC of the steps that it intends to

take to correct the deficiency, and indicate when it will complete such steps. Proposed § 1112.11(d) also would require the quality manager to document that they notified the relevant parties within the third party conformity assessment body to take corrective action and also document the action(s) taken.

Proposed § 1112.11(e) would describe the possible consequences if a third party conformity assessment body fails to remedy the deficiency in a timely fashion. In brief, proposed § 1112.11(e) would state that the CPSC ''shall take whatever action it deems appropriate under the circumstances, up to and including withdrawing the CPSC's accreditation of the third party conformity assessment body or the CPSC's acceptance of the third party conformity assessment body's accreditation.''

We received no comments on this provision, but we have renumbered the provision as § 1112.37 in the final rule. Additionally, on our own initiative, we have:

- Revised the second sentence in § 1112.37(b), by changing ''he/she notified'' to ''they notified'';
- Revised the address in § 1112.37(c), to replace ''Maryland'' with ''MD''; and
- Revised the next-to-last sentence in § 1112.37(d), to change ''correct the deficiency and when it will complete such steps'' to ''correct the deficiency, and indicate when it will complete such steps''; and
- Revised the last sentence in § 1112.37(d), by changing ''he/she notified'' to ''they notified * * *.''

These changes are for grammatical purposes.

7. § 1112.39—What records should a third party conformity assessment body retain regarding an audit?

Proposed § 1112.13 (now renumbered as § 1112.39 in the final rule) would require a third party conformity assessment body to retain all records related to an audit and all records pertaining to the third party conformity assessment body's resolution of, or plans for, resolving nonconformities identified by the audit. Such nonconformities could be identified through a reassessment by an accreditation body or through an examination by the CPSC. The proposal also would require third party conformity assessment bodies to retain records related to the last three reassessments (or however many reassessments have been conducted, if the third party conformity assessment body has been reassessed less than three times) and make such records available to the CPSC, upon request.

The proposal also would require third party conformity assessment bodies to retain records related to the last three reassessments because such records may reveal whether a pattern of problems with accreditation exists, and the records may indicate how quickly such problems are addressed and resolved.

(Comment 11)—One commenter noted that ISO/IEC 17011 requires the accreditation body, rather than the conformity assessment body, to keep records of reassessments. The commenter said that it would be a burden on the accreditation body to make duplicates of these records and provide them to the conformity assessment body. The commenter said that a third party conformity assessment body could meet the objectives for record retention by keeping records of resolutions of nonconformities.

(Response 11)—It is not the intent of the recordkeeping provision for the conformity assessment body to make available to the CPSC all records associated with reassessments that are maintained by the accreditation body. However, assessment and reassessment records need to be retained by the conformity assessment body and made available, upon request, to the CPSC, and the records must include reports of nonconformities, as well as resolution of nonconformities. In addition, assessment/reassessment reports that the accreditation body provides to the conformity assessment body must be made available to the CPSC, upon request.

Consequently, we have amended the rule to clarify that the records retained should include any records received from the accreditation body, as well as the records generated by the conformity assessment body (such as a resolution report discussed in § 1112.39) related to reassessment. Additionally, on our own initiative, and for grammatical purposes, we have revised the last sentence in § 1112.39, by inserting a comma between ''however many reassessments have been conducted'' and ''if the third party conformity assessment body has been reassessed less than three times'' and by inserting another comma after ''available to the CPSC'' and ''upon request.'' We also have changed the words ''relating to'' to ''related to'' throughout § 1112.39; these changes are for grammatical purposes only.

B. General Comments

Many comments pertained to issues outside the scope of the rule. For example, some comments addressed matters related to the initial accreditation of third party conformity assessment bodies. Other comments sought ''reciprocity'' between conformity assessment body (''laboratory'') programs administered by other federal agencies or other entities. We address those comments in this section.

(Comment 12)—A commenter suggested that the CPSC include reciprocity provisions as part of its accreditation criteria for laboratories to ensure a level playing field for testing organizations based in the United States with respect to foreign competition. Another commenter suggested that the CPSC amend the proposed requirements to include reciprocity provisions drawn from OSHA's NRTL and FCC's TCB programs. The commenter argued that the CPSC would be putting in place a ''system of special privileges'' that would damage laboratories in the United States because the third party conformity assessment body accreditation process is ''open to all countries while other countries' conformity assessment systems are not open to U.S.-based laboratories,'' thus creating ''a one-way trading relationship and does not advantage all in the supply chain.'' Another commenter expressed concern about a lack of reciprocity requirements, stating that foreign countries that wish to participate in a third party conformity assessment body program should be ''mandated to offer recognition to U.S.-based laboratories for its certification programs.''

(Response 12)—We decline to revise the rule as suggested by the commenters. Issues regarding reciprocity, either of laboratory accreditation or test results, are outside the scope of this rule. Nothing in section 14(i)(1) of the CPSA authorizes the Commission to include reciprocity of laboratory accreditations or test results as falling within a ''periodic audit of third party conformity assessment bodies as a condition for the continuing accreditation of such conformity assessment bodies under [section 14(a)(3)(C) of the CPSA].'' Furthermore, we do not believe that we have the legal authority to impose a requirement on foreign governments.

(Comment 13)—One commenter expressed opposition to having accreditation by a signatory to the ILAC–MRA. The commenter said there is no reciprocal agreement with ILAC countries to accept accreditations by the American National Standards Institute, OSHA, or the Standards Council of Canada. The commenter said such acceptance by the CPSC would help to ensure the impartiality of certification.

(Response 13)—As explained in more detail in the response to Comment 6 above, accreditation by a signatory to the ILAC–MRA ensures some degree of similarity or uniformity among accreditation bodies, regardless of their geographical location, and it also ensures uniformity among third party conformity assessment bodies accredited by ILAC–MRA accreditation bodies. While the commenter is correct that there is no reciprocal agreement with ILAC countries to accept certain accreditations by entities in the United States or Canada, we do not believe that the audit requirement in the CPSIA gives the Commission the authority to demand reciprocity from foreign countries as a function of the audit process. An international agreement of that type is beyond the scope of this rulemaking.

As for the impartiality of certification, we note that the CPSA does not require conformity assessment bodies to issue certificates. Instead, under existing CPSC regulations at 16 CFR part 1110, domestic manufacturers and importers issue certificates.

(Comment 14)—One commenter noted that, in some ''systems,'' the same government entity is responsible for accreditation, testing, and certification. The commenter said that sections 14(f)(2)(B)(i) through (f)(2)(B)(v) of the CPSA (which lists the criteria for Commission acceptance of governmental conformity assessment bodies) should require extensive documentation during initial acceptance and during audits.

(Response 14)—The commenter did not elaborate on or describe what documentation would be necessary. In any event, the commenter's focus appears to be on revising the statutory or administrative criteria pertaining to government-owned or government-controlled conformity assessment bodies, rather than revising the proposed audit requirements. Thus, the comment is outside the scope of the rule.

(Comment 15)—One commenter stated that a Government Accountability Office (GAO) report issued in August 2009, assessing the effectiveness of enforcement of the CPSC's requirements, identified some resource limitations that could affect our ability to address and enforce requirements on foreign laboratories (both government-owned or government-controlled and firewalled conformity assessment bodies).

(Response 15)—The commenter may have confused laboratories whose tests form the basis for a manufacturer or importer to issue a children's product certificate, with CPSC laboratory testing in support of its import surveillance activities. The GAO report titled, ''Better Information and Planning Would Strengthen CPSC's Oversight of Imported Products,'' GAO–09–803 (available on the Internet at *http://www.gao.gov/new.items/d09803.pdf*), refers to overseas manufacturers whose products are imported into the United States and are tested by the CPSC at our laboratory facilities. The GAO report does not discuss accreditation or audit requirements for laboratories. Accordingly, issues regarding the GAO report are outside the scope of this rule.

(Comment 16)—One commenter suggested that to alleviate uncertainty and confusion, the CPSC should address the lack of a definition for a ''reasonable testing program.''

(Response 16)—This comment is outside the scope of the audit provisions of section 14(i)(1) of the CPSA. This rulemaking implements section 14(i)(1) of the CPSA. A ''reasonable testing program'' is part of section 14(a)(1) of the CPSA, and we note that, in the **Federal Register** of May 20, 2010 (75 FR 28336), we published a proposed rule on ''Testing and Labeling Pertaining to Product Certification.'' The proposed rule contained (among other things) requirements for a ''reasonable testing program.'' However, in the final rule on ''Testing and Labeling Pertaining to Product Certification'' (76 FR 69482 (November 8, 2011)), we decided to reserve, rather than finalize, the ''reasonable testing program'' requirements. Thus, issues related to a ''reasonable testing program'' are part of a separate rulemaking.

(Comment 17)—One commenter suggested that the CPSC reassert that compliance to the CPSIA is the manufacturer's responsibility, not the retailer's, and that retailers must accept testing from any accredited third party conformity assessment body approved by the CPSC.

(Response 17)—Current CPSC regulations, at 16 CFR part 1110, limit the persons required to comply with the certification requirements of section 14(a) of the CPSA to: the importer (for products manufactured outside of the United States) and to the domestic manufacturer (for products manufactured within the United States). Neither the CPSIA, nor the CPSA, require a retailer to accept product testing results from any accredited third party conformity assessment body whose accreditation is accepted by the CPSC.

Additionally, as we noted in the preamble to our proposed rule on ''Testing and Labeling Pertaining to Product Certification'' (75 FR 28336, 28337 (May 20, 2010)):

> The Commission understands the economic ramifications that small businesses (and even large businesses) face regarding the testing costs required by section 102 of the CPSIA. Moreover, retailers and importers may be imposing significant additional testing cost on manufacturers by requiring that products that have already been tested by a third party conformity assessment body be tested again by a specific third party conformity assessment body selected by the retailer or importer. The Commission wants to emphasize to retailers and sellers of children's products that they can rely on certificates provided by product suppliers if those certificates are based on testing conducted by a third party conformity assessment body. Section 19(b) of the CPSA provides that a retailer or seller of a children's product shall not be subject to civil or criminal penalties for selling products that do not comply with applicable safety standards if it holds a certificate issued in accordance with section 14(a) of the CPSA to the effect that such consumer product conforms to all applicable consumer product safety rules, unless such person knows that such consumer product does not conform. The Commission notes that section 19(b) of the CPSA does not relieve any person of the obligation to conduct a corrective action should any product violate an applicable safety standard and need to be recalled.

III. Paperwork Reduction Act

The final 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 OMB has approved the information collection requirements in this rule. The OMB control number pertaining to such approval is OMB 3041–0140, and it expires on December 31, 2012.

IV. Regulatory Flexibility Act

The CPSC has examined the impacts of the final rule under the Regulatory Flexibility Act (5 U.S.C. 601–612). The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the required information is minimal, and the costs associated with the audits are low, the Commission certifies that the final rule would not have a significant economic impact on a substantial number of small entities.

A. Objectives and Legal Basis for the Final Rule

Section 14(i)(1) of the CPSA requires the Commission to establish requirements for the periodic audit of third party conformity assessment

bodies as a condition of their continuing accreditation. The final rule implements the requirements for the periodic audits. The purpose of a periodic audit is to ensure that an accredited laboratory continues to be competent to perform the testing services for which it has been accredited. In the case of accredited third party conformity assessment bodies that are owned, managed, or controlled by a manufacturer (or ''firewalled laboratories''), or that are owned or controlled, in whole or in part, by a government entity, the audit requirements give the Commission the opportunity to ensure that the third party conformity assessment body continues to comply with the CPSIA's requirements for ''firewalled'' and government-owned or government-controlled conformity assessment bodies.

B. Firms Subject to the Requirement for Periodic Audits

The requirement for periodic audits will affect only third party conformity assessment bodies that intend to provide the CPSIA-required third party conformity assessment services for manufacturers or private labelers of children's products. Third party conformity assessment bodies that do not intend to offer third party conformance testing for children's products are not affected by the requirements for accreditation or periodic audits.

As of August 29, 2011, the CPSC had accepted the accreditations of 87 third party conformity assessment bodies located within the United States. This number could increase, somewhat, over the next year or so, as the remaining notices of requirements for accreditation are issued and the stays of enforcement of the requirements for third party testing (which the Commission issued pending clarification of the regulations and testing requirements) are lifted. Of the third party conformity assessment bodies located in the United States with CPSC-accepted accreditations, 12 are owned by large, foreign-based companies; 22 are large, U.S.-based companies; and the remaining 53 could be small businesses, according to the criteria established by the U.S. Small Business Administration (SBA), which, for a testing laboratory (NAICS code 54138), is a company with less than $12 million in annual revenue.

C. Requirements of the Final Rule and Possible Impacts on Small Businesses

The notices of requirements issued by the CPSC for the accreditation of third party conformity assessment bodies state, as a baseline requirement, that third party conformity assessment bodies must be accredited by an accreditation body that is a signatory to the ILAC–MRA. ILAC is an international cooperation of laboratory accreditation bodies that seek to harmonize laboratory accreditation procedures to facilitate the acceptance of the testing results of accredited laboratories within and across national boundaries. The ILAC–MRA includes requirements for the initial assessment of laboratories, as well as periodic reassessments. Laboratories that do not submit to the periodic reassessments lose their accredited status.

Under the final rule, the periodic audit of a third party conformity assessment body would consist of two parts. The first part would be a reassessment by the accreditation body to determine whether it continues to meet the conditions of accreditation. The second part of the audit would be the resubmission to the CPSC of CPSC Form 223 and its review by the CPSC.

All signatories to the ILAC–MRA have requirements for the periodic reassessment of accredited laboratories. The ILAC–MRA harmonized procedures for surveillance and reassessment of accredited laboratories and recommended that the time between reassessments be no more than 60 months, provided that the accreditation body undertakes somewhat less comprehensive surveillance visits at least every 18 months. However, many accreditation bodies opt to undertake more frequent full reassessments, rather than conduct surveillance visits. According to ISO/IEC 17011, if an accreditation body does not conduct surveillance visits, full reassessments of accredited laboratories must take place at least once every 2 years.

The resubmission of CPSC Form 223 is intended to provide the Commission with an opportunity to ensure that the third party conformity assessment body continues to be accredited by an ILAC–MRA signatory and continues to comply with the requirements for firewalled and government-owned or controlled conformity assessment bodies, if applicable. However, because CPSC staff, in light of its experience with the accreditation process and software changes, has reconsidered when the form should be submitted, and therefore, the final rule does not state when the CPSC Form 223 must be resubmitted. Instead, such matters will be addressed in a separate rulemaking.

Costs associated with periodic audits include: The time cost of the assessor from the accreditation body; and his or her travel, lodging, and meal expenses incurred while conducting the reassessment. According to an accreditation body representative, a reassessment typically takes 2 to 3 days; and the cost charged to the third party conformity assessment body usually will be $3,000 to $4,000 per field (*e.g.,* chemical, electrical, or mechanical testing) in which the third party conformity assessment body is accredited. Therefore, a third party conformity assessment body that is accredited for testing conformance to both chemical and mechanical standards could expect an assessment or reassessment to cost $6,000 to $8,000.

Another expense of a reassessment by an accreditation body is the cost of the time spent by third party conformity assessment body personnel to cooperate with the assessors. This includes the time required to prepare or assemble documents needed by the auditors, as well as the time it takes to explain or demonstrate the procedures used at the third party conformity assessment body. No empirical estimates of this cost were found; however, the amount of time spent by third party conformity assessment body personnel during a reassessment could be close to the amount of time spent by the assessor. If the average reassessment takes 2.5 days (or 20 hours), and the wage of the employees involved is about $44 an hour, then the cost of the time of the third party conformity assessment body's personnel spent cooperating with the reassessment would be about $880. The median hourly wage of architecture and engineering occupations in testing laboratories (NAICS code 541380) is $31.65. U.S. Department of Labor, Bureau of Labor Statistics, National Occupational Employment and Wage Estimates, May 2008 (*http://www.bls.gov/oes/oes_dl.htm*). In 2008, wages and salaries represented about 71.9 percent of total compensation for professional and related occupations in private industry (U.S. Department of Labor, Bureau of Labor Statistics, Employer cost for Employee Compensation (data extracted on June 17, 2009)).) The cost could be higher if the reassessment takes longer than 2.5 days or higher-paid employees are involved in the reassessment.

The periodic audits required would cost third party conformity assessment bodies about $4,000 to $5,000 (rounded to the nearest thousand) per field in which the third party conformity assessment body is accredited. This expense includes the cost of the accreditation body's assessors, as well as the third party conformity assessment body personnel's time spent on the assessments and other costs, such as the cost of providing the materials required

of ''firewalled'' conformity assessment bodies. The time between audits will vary to some degree among accreditation bodies; however, a typical period is about once every 2 years. Therefore, the annual average cost of the periodic audits would be approximately $2,000 to $2,500 per field in which the third party conformity assessment body is accredited. Therefore, the annual cost to a third party conformity assessment body accredited in three fields (*e.g.,* chemical, mechanical, and electrical) would be approximately $6,000 to $7,500.

As noted earlier, of the third party conformity assessment bodies based in the United States, for which the CPSC has recognized accreditations, 43 (or about 62 percent) appear to be small businesses, according to the SBA criteria. However, it is unlikely that the rule will have a significant adverse impact on many third party conformity assessment bodies. The only third party conformity assessment bodies that will seek accreditation for testing children's products are those that expect to receive substantial revenue from the third party testing requirement in the CPSA, as amended by the CPSIA. Those third party conformity assessment bodies that do not expect substantial revenue from the testing will not seek to be accredited for the testing, or they can choose not renew their accreditation—if they initially sought accreditation—but the revenue they expected did not materialize.

D. Alternatives to the Final Rule Considered

Given that the CPSC is relying upon accreditation bodies that are signatories to the ILAC–MRA to accredit and reassess the third party conformity assessment bodies, there are no realistic alternatives to the final rule that would lower substantially the cost of the periodic audits. The frequency of the reassessments of the third party conformity assessment bodies is determined by the accreditation bodies, not by the CPSC.

V. Environmental Considerations

This final rule falls within the scope of the Commission's environmental review regulations at 16 CFR § 1021.5(c)(2), which provide a categorical exclusion from any requirement for the agency to prepare an environmental assessment or environmental impact statement for product certification rules.

VI. Effective Date

The final rule becomes effective on July 23, 2012.

List of Subjects in 16 CFR Part 1112

Consumer protection, Third party conformity assessment body, Audit.

For the reasons stated above, the Commission amends Title 16 of the Code of Federal Regulations by adding a new part 1112, subpart A and subpart C, to read as follows:

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

Sec.

Subpart A—Purpose and Definitions

1112.1 [Reserved]
1112.3 Definitions.
1112.1 [Reserved]

Subpart B—[Reserved]

Subpart C—Audit Requirements for Third Party Conformity Assessment Bodies

1112.30 What is the purpose of this subpart?
1112.31 Who is subject to these audit requirements?
1112.33 What must an audit address or over and who conducts the audit?
1112.35 When must an audit be conducted?
1112.37 What must a third party conformity assessment body do after an audit?
1112.39 What records should a third party conformity assessment body retain regarding an audit?

Authority: Pub. L. 110–314, section 3, 122 Stat. 3016, 3017 (2008); 15 U.S.C. 2063.

Subpart A—Purpose and Definitions

§ 1112.3 Definitions.

Unless otherwise stated, the definitions of section 3 of the CPSA and additional definitions in the Consumer Product Safety Improvement Act of 2008, Public Law 110–314, apply for purposes of this part. The following definitions apply for purposes of this subpart:

Accreditation means a procedure by which an authoritative body gives formal recognition that a third party conformity assessment body meets competence requirements to perform specific tasks. Accreditation recognizes a third party conformity assessment body's technical capability and is usually specific for tests of the systems, products, components, or materials for which the third party conformity assessment body claims proficiency.

Accreditation body means an entity that:

(1) Accredits or has accredited a third party conformity assessment body as meeting, at a minimum, the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) Standard ISO/IEC 17025:2005, ''General Requirements for the Competence of Testing and Calibration Laboratories,'' and any test methods or consumer product safety requirements specified in the relevant notice of requirements issued by the Commission; and

(2) Is a signatory to the International Laboratory Accreditation Cooperation–Mutual Recognition Arrangement.

Audit means a systematic, independent, documented process for obtaining records, statements of fact, or other relevant information, and assessing them objectively to determine the extent to which specified requirements are fulfilled. An audit, for purposes of this part, consists of two parts:

(1) An examination by an accreditation body to determine whether the third party conformity assessment body meets or continues to meet the conditions for accreditation (a process known more commonly as a ''reassessment''); and

(2) The resubmission of the ''Consumer Product Conformity Assessment Body Acceptance Registration Form'' (CPSC Form 223) by the third party conformity assessment body and the Consumer Product Safety Commission's (''CPSC's'') examination of the resubmitted CPSC Form 223. If the third party conformity assessment body is owned, managed, or controlled by a manufacturer or private labeler (also known as a ''firewalled'' conformity assessment body) or is a government-owned or government-controlled conformity assessment body, the CPSC's examination may include verification to ensure that the entity continues to meet the appropriate statutory criteria pertaining to such conformity assessment bodies.

CPSC means the Consumer Product Safety Commission.

Quality manager means an individual (however named) who, irrespective of other duties and responsibilities, has defined responsibility and authority for ensuring that the management system related to quality is implemented and followed at all times and has direct access to the highest level of management at which decisions are made on the conformity assessment body's policy or resources.

Subpart B—[Reserved]

Subpart C—Audit Requirements for Third Party Conformity Assessment Bodies

§ 1112.30 What is the purpose of this subpart?

This subpart establishes the audit requirements for third party conformity assessment bodies pursuant to section

14(i)(1) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2063(i)(1)). Compliance with these requirements is a condition of the continuing accreditation of such third party conformity assessment bodies pursuant to section 14(a)(3)(C) of the CPSA. However, this subpart does not apply to certifying organizations under the Labeling of Hazardous Art Materials Act, even if such organizations are third party conformity assessment bodies.

§ 1112.31 Who is subject to these audit requirements?

Except for certifying organizations described in 16 CFR 1500.14(b)(8), these audit requirements apply to third party conformity assessment bodies operating pursuant to section 14(a)(2) of the CPSA. Third party conformity assessment bodies must comply with the audit requirements as a continuing condition of the CPSC's acceptance of their accreditation.

§ 1112.33 What must an audit address or cover and who conducts the audit?

(a) The reassessment portion of an audit must cover management requirements and technical requirements. Each reassessment portion of an audit also must examine the third party conformity assessment body's management systems to ensure that the third party conformity assessment body is free from any undue influence regarding its technical judgment.

(b) The third party conformity assessment body must have the reassessment portion of the audit conducted by the same accreditation body that accredited the third party conformity assessment body. For example, if a third party conformity assessment body was accredited by an accreditation body named AB–1, then AB–1 would conduct the reassessment. If, however, the same third party conformity assessment body changes its accreditation so that it becomes accredited by a different accreditation body named AB–2, then AB–2 would conduct the reassessment.

(c) The third party conformity assessment body must have the examination portion of the audit conducted by the CPSC. The examination portion of the audit will consist of resubmission of the ''Consumer Product Conformity Assessment Body Acceptance Registration Form'' (CPSC Form 223) by the third party conformity assessment body and the CPSC's examination of the resubmitted CPSC Form 223.

(1) For ''firewalled'' conformity assessment bodies, the CPSC's examination may include verification to ensure that the ''firewalled'' conformity assessment body continues to meet the criteria set forth in section 14(f)(2)(D) of the CPSA.

(2) For government-owned or government-controlled conformity assessment bodies, the CPSC's examination may include verification to ensure that the government-owned or government-controlled conformity assessment body continues to meet the criteria set forth in section 14(f)(2)(B) of the CPSA.

§ 1112.35 When must an audit be conducted?

(a) At a minimum, each third party conformity assessment body must be reassessed at the frequency established by its accreditation body.

(b) [Reserved]

§ 1112.37 What must a third party conformity assessment body do after an audit?

(a) When the accreditation body presents its findings to the third party conformity assessment body, the third party conformity assessment body's quality manager must receive the findings and, if necessary, initiate corrective action in response to the findings.

(b) The quality manager must prepare a resolution report identifying the corrective actions taken and any follow-up activities. If findings indicate that immediate corrective action is necessary, the quality manager must document that they notified the relevant parties within the third party conformity assessment body to take immediate corrective action and also document the action(s) taken.

(c) If the accreditation body decides to reduce, suspend, or withdraw the third party conformity assessment body's accreditation, and the reduction, suspension, or withdrawal of accreditation is relevant to the third party conformity assessment body's activities pertaining to a CPSC regulation or test method, the quality manager must notify the CPSC. Such notification must be sent to the Assistant Executive Director, Office of Hazard Identification and Reduction, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, within five business days of the accreditation body's notification to the third party conformity assessment body.

(d) If the CPSC finds that the third party conformity assessment body no longer meets the conditions specified in CPSC Form 223, or in the relevant statutory provisions applicable to that third party conformity assessment body, the CPSC will notify the third party conformity assessment body, identify the condition or statutory provision that is no longer met, and specify a time by which the third party conformity assessment body shall notify the CPSC of the steps it intends to take to correct the deficiency, and indicate when it will complete such steps. The quality manager must document that they notified the relevant parties within the third party conformity assessment body to take corrective action and also document the action(s) taken.

(e) If the third party conformity assessment body fails to remedy the deficiency in a timely fashion, the CPSC shall take whatever action it deems appropriate under the circumstances, up to and including withdrawing the CPSC's accreditation of the third party conformity assessment body or the CPSC's acceptance of the third party conformity assessment body's accreditation.

§ 1112.39 What records should a third party conformity assessment body retain regarding an audit?

A third party conformity assessment body must retain all records related to an audit that it receives from an accreditation body regarding a reassessment and all records pertaining to the third party conformity assessment body's resolution of, or plans for, resolving nonconformities identified through a reassessment by an accreditation body or through an examination by the CPSC. A third party conformity assessment body also must retain such records related to the last three reassessments (or however many reassessments have been conducted, if the third party conformity assessment body has been reassessed less than three times) and make such records available to the CPSC, upon request.

Todd A. Stevenson,

Secretary.

[FR Doc. 2012–10922 Filed 5–23–12; 8:45 am]

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1112 and 1118

[CPSC Docket No. CPSC–2012–0026]

Requirements Pertaining to Third Party Conformity Assessment Bodies

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission (''CPSC,'' ''Commission,'' or ''we'') is issuing a proposed rule that would establish the requirements pertaining to the third party conformity assessment bodies (or ''laboratories'') that are authorized to test children's products in support of the certification required by the Consumer Product Safety Act (CPSA), as amended by the Consumer Product Safety Improvement Act of 2008 (CPSIA). The proposed rule would establish the general requirements concerning third party conformity assessment bodies, such as the requirements and procedures for CPSC acceptance of the accreditation of a third party conformity assessment body, and it would address adverse actions against CPSC-accepted third party conformity assessment bodies. The proposed rule also would amend the audit requirements for third party conformity assessment bodies and would amend the Commission's regulation on inspections.

DATES: Comments in response to this notice of proposed rulemaking must be received by August 7, 2012.

ADDRESSES: Comments related to the Paperwork Reduction Act aspects of the instructional literature and marking requirements of the proposed rule should be directed to the Office of Information and Regulatory Affairs, OMB, Attn: CPSC Desk Officer, FAX: 202–395–6974, or emailed to *oira_submission@omb.eop.gov.* You may submit comments, identified by Docket No. CPSC–2012–0026 by either of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (email) except through *http://www.regulations.gov.*
- *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions) preferably in five copies, to:* Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. Do not submit confidential business information, trade secret information, or other sensitive or protected information (such as a Social Security Number) electronically; if furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Randy Butturini, Project Manager, Office of Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; 301–504–7562; email: *RButturini@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background: Statutory Provisions

Section 14(a)(1) of the CPSA (15 U.S.C. 2063(a)(1)), as amended by the CPSIA (Pub. L. 110–314, 122 Stat. 3016), requires that the manufacturer and the private labeler, if any, of a product that is subject to an applicable consumer product safety rule under the CPSA, or any similar rule, ban, standard, or regulation under any other Act enforced by the CPSC, issue a General Conformity Certificate. The General Conformity Certificate certifies ''based on a test of each product or upon a reasonable testing program, that such product complies with all rules, bans, standards, or regulations applicable to the product under this Act or any other Act enforced by the Commission,'' and it specifies each rule, ban, standard, or regulation applicable to the product. 15 U.S.C. 2063(a)(1)(A).

Section 14(a)(2) of the CPSA states that, for any children's product that is subject to a children's product safety rule, every manufacturer of such children's product (and the private labeler if the children's product bears a private label) shall submit sufficient samples of the product, or samples that are identical in all material respects to the product, to an accredited third party conformity assessment body (or, ''laboratory'') to be tested for compliance with such children's product safety rule. Section 14(a)(2)(B) of the CPSA requires the manufacturer or private labeler, based on such testing, to issue a certificate (''Children's Product Certificate'') certifying that such product complies with the children's product safety rule. Section 14(h) of the CPSA clarifies that, irrespective of certification, the product in question must actually comply with all applicable rules, regulations, standards, or bans enforced by the CPSC.

Section 14(a)(3) of the CPSA establishes various timelines for accreditation of the laboratories that may conduct third party tests of children's products and requires the Commission to publish ''a notice of the requirements for accreditation of third party conformity assessment bodies to assess conformity'' with specific laws or regulations. Under section 14(a)(3)(A) of the CPSA, the requirement for a manufacturer or private labeler of a children's product subject to a children's product safety rule to issue a certificate based on third party testing does not commence until ''more than 90 days'' after the Commission publishes a notice of requirements pertaining to the regulation or standard to which the children's product is subject.

The Commission has published several notices of requirements in the **Federal Register**. *See, e.g.,* 73 FR 54564 (September 22, 2008) (Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity with Part 1303 of Title 16, Code of Federal Regulations); 74 FR 45428 (September 2, 2009) (Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity with Parts 1203, 1510, 1512, and/or 1513 and § 1500.86(a)(7) and/or (a)(8) of Title 16, Code of Federal Regulations); 75 FR 70911 (November 19, 2010) (Third Party Testing for Certain Children's Products; Children's Sleepwear, Sizes 0 Through 6X and 7 Through 14: Requirements for Accreditation of Third Party Conformity Assessment Bodies). We invited public comment on most, but not all, notices of requirements. In section III of this preamble, we summarize and respond to those comments. Section 14(a)(3)(C) of the CPSA provides that the Commission may either accredit laboratories itself or may designate an independent accreditation organization to conduct the accreditations. Section 14(a)(3)(E) of the CPSA requires that the Commission maintain on its Web site an up-to-date list of entities that have been accredited to assess conformity with children's product safety rules.

Section 14(i)(1) of the CPSA requires the Commission to establish ''requirements for the periodic audit of third party conformity assessment bodies as a condition for the continuing accreditation of such conformity assessment bodies'' under section

14(a)(3)(C) of the CPSA. Section 14(e) of the CPSA addresses Commission withdrawal and suspension of the accreditation (or its acceptance of the accreditation) of a laboratory.

Section 14(f)(2)(A) of the CPSA defines a ''third party conformity assessment body'' to mean a conformity assessment body that is not owned, managed, or controlled by the manufacturer or private labeler of a product assessed by the laboratory, unless such a laboratory has satisfied certain statutory criteria. Section 14(f)(2)(D) of the CPSA provides that a laboratory owned, managed, or controlled by a manufacturer or private labeler may be accepted by the Commission if the Commission makes certain findings, by order, concerning the laboratory's protections against undue influence by the manufacturer, private labeler, or other interested parties. In that case the laboratory is considered ''firewalled.'' Similarly, section 14(f)(2)(B) of the CPSA lists five criteria that a conformity assessment body owned or controlled in whole or in part by a government (or ''governmental laboratory'') must satisfy for its accreditation to be accepted by the CPSC.

This proposed rule, if finalized, would establish the requirements related to CPSC acceptance of the accreditation of a laboratory for purposes of testing children's products under section 14 of the CPSA. The proposed requirements would be largely the same as the requirements that the CPSC has been using since the CPSIA's passage in August 2008. Among other things, the proposed rule also would delineate how a laboratory may voluntarily discontinue its participation with the CPSC, and it would establish the procedures for the suspension and/or withdrawal of CPSC acceptance of the accreditation of a laboratory. This proposed rule also would amend our rule titled, ''Audit Requirements for Third Party Conformity Assessment Bodies'' (''audit final rule''), which implements section 14(i)(1) of the CPSA, and is published elsewhere in this issue of the **Federal Register**. Finally, the proposed rule would make particular conforming amendments to 16 CFR 1118.2(a).

II. Background: The CPSC Third Party Conformity Assessment Body Program, to Date

We published 19 notices of requirements between August 14, 2008 and August 14, 2011.

The notices of requirements established the criteria and process for CPSC acceptance of accreditation of laboratories for testing children's products under section 14 of the CPSA. Each notice of requirements was specific to particular CPSC rules, bans, standards, or regulations, and/or it was specific to a standard established by the CPSIA. We have published the following notices of requirements:

- Third Party Testing for Certain Children's Products; Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity With Part 1303 of Title 16, Code of Federal Regulations, 73 FR 54564 (Sept. 22, 2008).
- Third Party Testing for Certain Children's Products; Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity With Part 1508, Part 1509, and/or Part 1511 of Title 16, Code of Federal Regulations, 73 FR 62965 (Oct. 22, 2008).
- Third Party Testing for Certain Children's Products; Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity With Part 1501 of Title 16, Code of Federal Regulations, 73 FR 67838 (Nov. 17, 2008).
- Accreditation Requirements for Third Party Conformity Assessment Bodies to Test to the Requirements for Lead Content in Children's Metal Jewelry as Established by the Consumer Product Safety Improvement Act of 2008, 73 FR 78331 (Dec. 22, 2008).
- Third Party Testing for Certain Children's Products; Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity With Parts 1203, 1510, 1512, and/or 1513 and Section 1500.86(a)(7) and/or (a)(8) of Title 16, Code of Federal Regulations, 74 FR 45428 (Sept. 2, 2009).
- Third Party Testing for Certain Children's Products; Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity With the Limits on Total Lead in Children's Products, 74 FR 55820 (Oct. 29, 2009).
- Third Party Testing for Certain Children's Products; Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity With Part 1505 and/or § 1500.86(a)(5) of Title 16, Code of Federal Regulations, 75 FR 22746 (April 30, 2010).
- Third Party Testing for Certain Children's Products; Infant Bath Seats: Requirements for Accreditation of Third Party Conformity, 75 FR 31688 (June 4, 2010); correction, 75 FR 33683 (June 15, 2010).
- Third Party Testing for Certain Children's Products; Infant Walkers: Requirements for Accreditation of Third Party Conformity Assessment Bodies, 75 FR 35282 (June 21, 2010).
- Third Party Testing for Certain Children's Products; Carpets and Rugs: Requirements for Accreditation of Third Party Conformity Assessment Bodies, 75 FR 42315 (July 21, 2010).
- Third Party Testing for Certain Children's Products; Vinyl Plastic Film: Requirements for Accreditation of Third Party Conformity Assessment Bodies, 75 FR 42311 (July 21, 2010).
- Third Party Testing for Certain Children's Products; Mattresses, Mattress Pads, and/or Mattress Sets: Requirements for Accreditation of Third Party Conformity Assessment Bodies, 75 FR 51020 (Aug. 18, 2010).
- Third Party Testing for Certain Children's Products; Clothing Textiles: Requirements for Accreditation of Third Party Conformity Assessment Bodies, 75 FR 51016 (Aug. 18, 2010).
- Third Party Testing for Certain Children's Products; Youth All-Terrain Vehicles: Requirements for Accreditation of Third Party Conformity Assessment Bodies, 75 FR 52616 (Aug. 27, 2010).
- Third Party Testing for Certain Children's Products; Children's Sleepwear, Sizes 0 Through 6X and 7 Through 14: Requirements for Accreditation of Third Party Conformity Assessment Bodies, 75 FR 70911 (Nov. 19, 2010).
- Third Party Testing for Certain Children's Products; Full-Size Baby Cribs and Non-Full-Size Baby Cribs: Requirements for Accreditation of Third Party Conformity Assessment Bodies, 75 FR 81789 (Dec. 28, 2010).
- Third Party Testing for Certain Children's Products; Toddler Beds: Requirements for Accreditation of Third Party Conformity Assessment Bodies, 76 FR 22030 (April 20, 2011).
- Third Party Testing for Certain Children's Products; Toys: Requirements for Accreditation of Third Party Conformity Assessment Bodies, 76 FR 46598 (Aug. 3, 2011).
- Third Party Testing for Certain Children's Products; Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity With the Limits on Phthalates in Children's Toys and Child Care Articles, 76 FR 49286 (Aug. 10, 2011).

The notices of requirements explained the three types of third party conformity assessment bodies contemplated by section 14 of the CPSA: (1) Third party conformity assessment bodies that are not owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the

third party conformity assessment body for certification purposes (''independent'' laboratories); (2) ''firewalled'' conformity assessment bodies (those that are owned, managed, or controlled by a manufacturer or private labeler of the children's product); and (3) third party conformity assessment bodies owned or controlled, in whole or in part, by a government (''governmental laboratories'').

The notices of requirements have stated that, for a third party conformity assessment body to be accredited to test children's products under section 14 of the CPSA, it must be accredited to the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) Standard 17025:2005, ''General requirements for the competence of testing and calibration laboratories.'' The accreditation must be by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation—Mutual Recognition Arrangement (ILAC–MRA). A listing of ILAC–MRA signatory accreditation bodies is available on the Internet at: *http://ilac.org/membersbycategory.html.* The scope of the laboratory's accreditation must include testing to a specific regulation or test method that has been the subject of a notice of requirements.

(A description of the history and content of the ILAC–MRA approach and of the requirements of the ISO/IEC 17025:2005 laboratory accreditation standard is provided in the CPSC staff briefing memorandum, ''Third Party Conformity Assessment Body Accreditation Requirements for Testing Compliance with 16 CFR Part 1501 (Small Parts Regulations),'' dated November 2008, and available on the CPSC's Web site at: *http://www.cpsc.gov/library/foia/foia09/brief/smallparts.pdf.*)

The notices of requirements have stated that the CPSC maintains on its Web site an up-to-date listing of laboratories whose accreditation it has accepted, and the scope of each accreditation. Once we add a laboratory to that list, the laboratory may begin testing children's products to any test method or regulation included in the laboratory's scope of accreditation on the CPSC list, to support a Children's Product Certificate.

In addition to the baseline accreditation requirements, the notices of requirements have provided that firewalled laboratories must submit to the CPSC, copies, in English, of their training documents, showing how employees are trained that they may notify the CPSC immediately of any attempt by the manufacturer, private labeler, or other interested party to hide or exert undue influence over the laboratory's test results. Employees also must be trained that their report of alleged undue influence may be reported to the CPSC confidentially. (The notices of requirements stated that firewalled applicants must submit ''training documents showing how employees are trained to notify the CPSC immediately and confidentially of any attempt * * * to hide or exert undue influence.'' To be more consistent with the statute, we are hereby describing this requirement as a need for the firewalled applicant to train employees that they may notify the CPSC immediately, and that a report to the CPSC may be confidential. The laboratory must have established procedures to ensure that an employee may report an allegation of undue influence to the CPSC and may do so confidentially. *See* 15 U.S.C. 2063(f)(2)(D)(ii)(III). Submission of training documents evidencing such policies is required. Additionally, the statute imposes a duty on the laboratory to have procedures in place to ensure that the CPSC is notified immediately of any attempt at undue influence, *see* 15 U.S.C. 2063(f)(2)(D)(ii). However, we do not interpret the statute as requiring an individual employee to contact the CPSC. Accordingly, the change in phrasing increases consistency with the statute.) These additional requirements have applied to any laboratory in which a manufacturer or private labeler of a children's product to be tested by the laboratory owns an interest of 10 percent or more.

With regard to governmental laboratories, the notices of requirements have reiterated the five criteria from section 14(f)(2)(B) of the CPSA that must be satisfied for the CPSC to accept the accreditation of a governmental laboratory:

- To the extent practicable, manufacturers or private labelers located in any nation are permitted to choose conformity assessment bodies that are not owned or controlled by the government of that nation;
- The third party conformity assessment body's testing results are not subject to undue influence by any other person, including another governmental entity;
- The third party conformity assessment body is not accorded more favorable treatment than other third party conformity assessment bodies in the same nation whose accreditation has been accepted by the CPSC;
- The third party conformity assessment body's testing results are accorded no greater weight by other governmental authorities than those of other third party conformity assessment bodies whose accreditation has been accepted by the CPSC; and
- The third party conformity assessment body does not exercise undue influence over other governmental authorities on matters affecting its operations or on decisions by other governmental authorities controlling distribution of products based on outcomes of the third party conformity assessment body's conformity assessments.

The notices of requirements have explained that CPSC staff will engage the governmental entities relevant to the accreditation request to obtain assurances that the statutory criteria are satisfied.

The notices of requirements also have explained that we have established an electronic accreditation acceptance and registration system accessed via the CPSC's Web site site at: *http://www.cpsc.gov/about/cpsia/labaccred.html.* CPSC Form 223, the application form for laboratories seeking CPSC acceptance of their accreditation, may be accessed, completed, and submitted online. The applicant must provide, in English, basic identifying information concerning its location, the type of accreditation it is seeking, electronic copies of its certificate and scope statement from an ILAC–MRA signatory accreditation body, and firewalled laboratory training document(s), if relevant.

As explained in the notices of requirements, CPSC staff reviews the submission for accuracy and completeness. In the case of independent and governmental laboratories, when that review and any necessary discussions with the applicant are completed, we will add any accepted laboratory to the CPSC's list of accepted laboratories. This list can be found at: *http://www.cpsc.gov/cgi-bin/labsearch.* In the case of a firewalled laboratory, when CPSC staff's review is complete, CPSC staff transmits its recommendation on acceptance of accreditation to the Commission (meaning, in this instance, the Commissioners) for consideration. If the Commission accepts a CPSC staff recommendation to accept the accreditation of a firewalled laboratory, we will add the firewalled laboratory to the CPSC's list of accepted laboratories. In each case, we notify the laboratory electronically of our acceptance of its accreditation.

The notices of requirements have become effective on publication, meaning that as soon as the notices of

requirements publish, laboratories could apply to the CPSC for acceptance of their accreditation. In most cases, the requirement for a manufacturer or private labeler of a children's product subject to a children's product safety rule to issue a certificate of compliance, based on third party testing with that rule, commences for products manufactured more than 90 days after publication of the notice of requirements that pertains to that rule.

In most cases, the standard or test method specified in a notice of requirements was either already in effect, or became effective upon publication of the notice of requirements. (There were four notices of requirements that published the same day as a final rule establishing the safety standard specified in the notice: the notices of requirements for infant bath seats, infant walkers, cribs, and toddler beds. In those cases, the safety standard took effect six months after publication. *See* 75 FR 31688 (June 4, 2010), correction, 75 FR 33683 (June 15, 2010); 75 FR 35282 (June 21, 2010); 75 FR 81789 (Dec. 28, 2010); 76 FR 22030 (Apr. 20, 2011)). Our approach to third party conformity assessment uses and builds upon existing systems of conformity assessment, based on ISO/IEC standards and internationally recognized accreditation bodies. Some manufacturers of children's products subject to children's product safety rules have put in place their own processes for third party testing to demonstrate conformity with certain mandatory and voluntary safety standards. As we were publishing the notices of requirements, we were aware that some manufacturers may already have been testing their products at laboratories that were accredited by an ILAC–MRA signatory accreditation body in accordance with ISO/IEC 17025:2005. Thus, it was possible that when a particular notice of requirements published, some products in the marketplace had already undergone testing (*i.e.,* earlier than the mandatory effective date of third party testing) in a way that would support certification with the respective children's product safety rule(s). Therefore, most notices of requirements included provisions allowing Children's Product Certificates to be based on testing performed by a ISO/IEC 17025:2005-accredited laboratory prior to the CPSC's acceptance of its accreditation. This practice is sometimes referred to as allowing ''retrospective'' testing. In the notices of requirements, we prescribed particular circumstances under which retrospective testing could support a Children's Product Certificate. For example, we required that the product be tested by a laboratory that was, at the time of product testing, accredited to ISO/IEC 17025:2005 by an ILAC–MRA signatory; the accreditation scope in effect at the time of testing had to include testing to the regulation or test method identified in the notice; and we placed constraints on how far back in time the retrospective testing could have occurred. In several of the initial notices of requirements, we did not allow any retrospective testing by firewalled laboratories. Later, we allowed retrospective testing by firewalled laboratories if the firewalled laboratory had already been accepted by an order of the Commission for testing to a children's product safety rule specified in an earlier notice of requirements.

III. Comments on the Notices of Requirements and the Commission's Responses

The Commission has established requirements for accreditation of third party conformity assessment bodies (''laboratories'') for certain children's product safety rules in accordance with section 102(a)(2) of the CPSIA. Most notices of requirements provided an opportunity for public comment. Below, we describe and respond to the comments submitted in response to the notices of requirements that published before August 14, 2011. As of August 14, 2011, 17 notices of requirements have been published in the **Federal Register**. Table 1 lists the notices of requirements.

TABLE 1—NOTICES OF REQUIREMENTS ISSUED WITH COMMENTS RECEIVED

Regulation or product(s)	**Federal Register** citation	*Regulations.gov* docket No.
Part 1303/Lead Paint	73 FR 54564, (September 22, 2008) (Revision notice at 76 FR 18645 (April 5, 2011)).	CPSC–2008–0033.
Parts 1508, 1509, 1511/Full-size cribs, non-full-size cribs, and pacifiers.	73 FR 62965, (October 22, 2008)	CPSC–2008–0038.
Part 1501/Small parts	73 FR 67838, (November 17, 2008)	CPSC–2008–0050.
Lead content in children's metal jewelry	73 FR 78331 (December 22, 2008)	CPSC–2008–0049.
Parts 1203,1510, 1512, 1513, sec. 1500.86(a)(7) and (a)(8)/Bicycle helmets, dive sticks, rattles, bicycles, and bunk beds.	74 FR 45428, (September 2, 2009)	CPSC–2009–0067.
Total lead in children's (metal and non-metal) products	74 FR 55820, (October 29, 2009)	CPSC–2009–0090
Part 1505, sec. 1500.86(a)(5)Electrically operated toys/articles and clacker balls.	75 FR 22746, (April 30, 2009)	CPSC–2010–0035
Part 1215/Infant bath seats	75 FR 31688, (June 4, 1020), (Correction notice at 75 FR 33683 (June 15, 2010)).	CPSC–2010–0064.
Part 1216/Infant walkers	75 FR 35282, (June 21, 2010)	CPSC–2010–0066.
Part 1611/Vinyl plastic film	75 FR 42311 (July 21, 2010)	CPSC–2010–0079.
Parts 1630 and 1631/Carpets and rugs	75 FR 42315 (July 21, 2010)	CPSC–2010–0078.
Part 1610/Clothing Textiles	75 FR 51016 (August 18, 2010) (Revision notice at 76 FR 22608 (April 22, 2011).	CPSC–2010–0086.
Parts 1632 & 1633/Mattresses, Mattress Pads, and Mattress Sets.	75 FR 51020 (August 18, 2010)Revision notice at 75 FR 72944 (November 29, 2010).	CPSC–2010–0085.
Part 1420/ATVs [1]	75 FR 52616 (August 27, 2010) (Extension notice at 75 FR 76708 (December 9, 2010).	CPSC–2010–0090.
Parts 1615 and 1616/Children's Sleepwear	75 FR 70911 (November 19, 2010)	None.
Parts 1219 and 1220/Full-Size Baby Cribs and Non-Full-Size Baby Cribs.	75 FR 81789 (December 28, 2010)	CPSC–2009–0064.
Part 1217/Toddler Beds	76 FR 22030 (April 20, 2011)	CPSC–2009–0064.
ASTM F 963–08, and section 4.27 of ASTM F 963–07 for toy chests (CPSIA Section 106).	76 FR 46598 (August 3, 2011)	CPSC–2011–0050.

TABLE 1—NOTICES OF REQUIREMENTS ISSUED WITH COMMENTS RECEIVED—Continued

Regulation or product(s)	**Federal Register** citation	*Regulations.gov* docket No.
CPSC–CH–C1001–09.3	76 FR 49286 (August 10, 2011)	CPSC–2011–0052.

[1] We note that recently we published a final rule in the **Federal Register**, revising 16 CFR part 1420. The final rule makes American National Standard, ANSI/SVIA–1–2010, the new mandatory standard for ATVs. Consequently, proposed § 1112.15(b)(9) would refer to the ANSI/SVIA–1–2010 safety standard for all-terrain vehicles for purposes of our acceptance of laboratory accreditation.

A summary of each of the commenters' topics is presented, and each topic is followed by our response. For ease of reading, each comment will be prefaced by 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.

A. Comments on Baseline Accreditation Requirements

(*Comment 1*)—Some commenters supported the use of International Standards Organization/International Electrotechnical Commission (ISO/IEC) 17025:2005 standard on testing and calibration laboratories and the International Laboratory Accreditation Cooperation—Mutual Recognition Arrangement (ILAC–MRA) because this helps establish an internationally recognized consortium for organizations qualified to provide accreditation services. A commenter recommended that the CPSC conduct periodic reviews and revise the accreditation requirements to ensure that the highest standards for laboratory accreditation are being followed. The commenter suggested that if ISO/IEC 17025:2005 is superseded by a more stringent standard, then the CPSC should adopt the more stringent standard.

(*Response 1*)—Section 14(a)(3)(D) of the CPSA states: ''[t]he Commission shall periodically review and revise the accreditation requirements established under subparagraph (B) to ensure that the requirements assure the highest conformity assessment body quality that is feasible.'' If a new version of ISO/IEC 17025:2005 is adopted by the ISO, the CPSC will review the new requirements and determine whether the new version would improve the CPSC's laboratory program. Any change to the requirements for CPSC-accepted third party conformity assessment bodies will be pursued as an amendment to 16 CFR part 1112.

(*Comment 2*)—Multiple commenters suggested that the Commission consider accepting laboratory accreditation from the National Environmental Laboratory Accreditation Conference (NELAC). A commenter noted that NELAC follows the ISO/IEC 17025:2005 standard and is similar to the American Association of Laboratory Accreditation (A2LA), an ILAC–MRA signatory accreditation body. The National Environmental Laboratory Accreditation Program (NELAP) implements the NELAC standards.

Another commenter recommended that the CPSC accept the accreditation of laboratories accredited by the American Industrial Hygiene Association (AIHA), which is accredited to ISO/IEC 17011:2004, but was not an ILAC–MRA signatory (at the time the comment was submitted). The AIHA accredits laboratories to ISO/IEC 17025:2005 for the National Lead Laboratory Accreditation Program (NLLAP), administered by the U.S. Environmental Protection Agency (EPA). One commenter stated that, by not including AIHA-accredited laboratories, there are not a sufficient number of laboratories in the United States to handle the volume of testing required by the CPSIA. Multiple commenters recommended that accreditation bodies that are part of the National Cooperation for Laboratory Accreditation (NACLA) be recognized by the CPSC, and thus, enable the laboratories accredited by NACLA members to provide test results for lead in paint that can be used as a basis of issuing a Children's Product Certificate. The NACLA does not rely on mutual recognition among accreditation bodies, but it has a Recognition Council to recognize accreditation bodies. NACLA members follow the provisions of ISO/IEC 17011:2004 and accredit laboratories to ISO/IEC 17025:2005.

(*Response 2*)—In September 2010, AIHA became an ILAC–MRA signatory. Laboratories accredited by AIHA, after becoming an ILAC–MRA signatory, may apply for CPSC acceptance of their accreditation. Therefore, the comment that the Commission should make AIHA a CPSC-designated accreditation body is moot. Currently, NACLA and NELAC are not signatories to the ILAC–MRA. NACLA and NELAC are domestic organizations that do not have recognition arrangements with foreign countries.

The CPSA, as amended by the CPSIA, directs the CPSC to establish and publish notices of requirements for accreditation of third party conformity assessment bodies to assess conformity with a children's product safety rule to which such children's product is subject. The CPSA provides that accreditation of third party laboratories may be conducted by the Commission or by an independent accreditation organization designated by the Commission.

In consideration of the timelines established by the CPSA and the fact that children's consumer products are manufactured for the U.S. market in nations throughout the world, we identified several objectives for a laboratory accreditation program that could accomplish the implementation of the CPSA. These objectives were:

(1) Designate the core elements of a CPSC accreditation program to an entity that is established and has acceptance on a multinational level. The entity should follow internationally recognized standards for assessing the competence of laboratories and for the processes and standards used by accreditation bodies that evaluate such laboratories;

(2) Designate one entity that immediately could bring on board, on a multinational level, the largest number of accreditation bodies that could begin the process of accrediting laboratories in accordance with the CPSC specific requirements for a children's product safety rule; and

(3) Avoid designation to accreditation programs or entities that are recognized only in a specific region, nation, or locality. The reasons for this objective are to: (a) Keep the program as simple as possible for use by manufacturers, private labelers, importers, laboratories, and other interested parties; (b) avoid any perceived notions of barriers to fair trade practices; (c) establish a program that is manageable within agency resources; and (d) maintain a degree of

consistency in the procedures used by the designated accreditation bodies.

The Commission will continue to designate accreditation bodies that are signatories to the ILAC–MRA. We believe that the laboratory accreditation requirements approved by the Commission are consistent with the direction of the CPSA and meet the objectives outlined above.

We recognize that there are other laboratory accreditation organizations or accreditation bodies. Some of these organizations may adhere to similar procedures and standards (but with some distinctions) as those established in the ILAC–MRA signatory program. However, expanding CPSC designations to such organizations would not meet all of the objectives outlined above.

Regarding laboratory testing capacity for lead in paint, we are not aware of any evidence indicating that insufficient CPSC-accepted laboratory testing capacity for lead in paint exists. If lead in paint testing capacity becomes an issue in the future, the CPSC will address the situation.

(*Comment 3*)—A commenter recommended that laboratories ''be specifically CPSC accepted based on accreditation which the [ILAC–MRA] system, on its own, may not ensure.'' The commenter stated that this would secure the impartiality of certification better. The commenter opposed limiting accreditation bodies to ILAC–MRA signatories because there is no reciprocity with ILAC–MRA countries to accept accreditations from the Occupational Safety and Health Administration (OSHA), the American National Standards Institute, or the Standards Council of Canada.

(*Response 3*)—With regard to the commenter's suggestion that there are standards or norms which the ILAC–MRA system ''on its own, may not ensure,'' the commenter did not specify what the ILAC–MRA system fails to ensure. Accordingly, we are unable to respond meaningfully to that portion of the comment. As for the impartiality of certification, we note that the CPSA does not require conformity assessment bodies to issue certificates. Instead, section 14(a)(2) of the CPSA assigns responsibility for certifying to ''every manufacturer of [a children's product subject to a children's product safety rule] (and the private labeler of such children's product if such children's product bears a private label).''

The topic of reciprocity is addressed in the response to Comment 7.

(*Comment 4*)—A commenter responding to the notice of requirements for accreditation of laboratories to assess conformity with 16 CFR part 1505 (electrically operated toys or other electrically operated articles intended for use by children) stated that many requirements of the regulation would not be evaluated by laboratory testing, but rather, would be evaluated via inspection, auditing, and construction review. For example, the fulfillment of requirements in §§ 1505.3, pertaining to labeling, 1505.4, regarding manufacturing requirements, and 1505.5, related to electrical design and performance, generally would not be evaluated by what is commonly understood as ''laboratory testing.'' The commenter suggested using ISO/IEC 17020:1998, *General criteria for the operation of various types of bodies performing inspection,* as the accreditation requirements for these activities. The commenter said that the CPSC could supplement ISO/IEC 17020:1998 criteria with additional specific requirements for individuals performing these activities to ensure that individuals possess engineering education, training, and experience to evaluate compliance effectively.

(*Response 4*)—Section 14(a)(2) of the CPSA requires manufacturers of any children's product subject to a children's product safety rule to submit the product for third party testing. As structured by the CPSA, certification of compliance with children's product safety rules is based on product testing (not manufacturing facility inspection) at a third party conformity assessment body (laboratory). A third party conformity assessment body conducts all of the performance tests in the standard. The portions of the standard, rule, ban, or regulation that do not use testing are attested to by the manufacturer when it issues a Children's' Product Certificate for the product.

Inspection, as intended by ISO/IEC 17020:1998, is generally used for individual items or very small production volumes. Conformity assessment is used for assuring compliance to established standards and is applicable to larger production volumes. At this time, we decline to recommend adopting the suggestion of using ISO/IEC 17020:1998.

(*Comment 5*)—One commenter urged the Commission to consider third party certification of products (as opposed to third party testing) by certification bodies accredited to ISO/IEC 17065, *General Requirements for Bodies Operating Product Certification Systems.* The commenter stated that third party certification includes actions taken by the certifying body to ensure continuing conformance. The commenter suggested that requiring third party certification and marking would be less costly and more effective. The commenter urged the CPSC to consider the principles of product certification outlined in the American National Standards Institute (ANSI) document, *National Conformity Assessment Principles for the United States.*

Another commenter asked that the CPSC consider alternative criteria for accreditation to allow for organizations that are accredited to Standard ISO/IEC 17065.

(*Response 5*)—With regard to the suggestion that the Commission consider third party certification of products, section 14(a)(2) of the CPSA specifically states that samples of the children's product are submitted to a third party conformity assessment body for testing (not for certification), and that the manufacturer or private labeler of the children's product issue the certificate that certifies that the product complies with the applicable children's product safety rules. That responsibility cannot be delegated to another party. Thus, certification of a children's product by a third party certification body does not meet the requirements of the CPSA.

With regard to the commenter's suggestion that the CPSC consider including alternative criteria for accreditation to allow CPSC acceptance of accreditations to ISO/IEC 17065, ISO/IEC 17065 has not (as of the date of this proposed rule) been finalized. This draft standard is still in development as a revision to ISO Guide 65:1996, *General Requirements for Bodies Operating Product Certification Systems.* Because ISO/IEC 17065 has not been finalized, we cannot evaluate whether this standard would meet the requirements of the CPSA. If we assume that the provisions of ISO Guide 65:1996 are maintained in ISO/IEC 17065, § 1.2 of ISO Guide 65:1996 states that the certification system used by the certification body may include one of more of a list of evaluation techniques. Included in that list are methods that do not involve testing for compliance to the applicable children's product safety rules. Section 14(a)(2)(B) of the CPSA requires Children's Product Certificates to be based on testing. Because ISO Guide 65:1996 allows for product certification without testing, certification by organizations that are accredited to ISO Guide 65:1996 may not include the required testing and cannot be used for children's product certification purposes.

With regard to the ANSI document, *National Conformity Assessment Principles for the United States,* this

document mirrors many widely-accepted concepts and processes used by conformity assessment bodies and certification bodies. For example, provisions in the ANSI document regarding testing competency and protection of a customer's data are mirrored in ISO/IEC 17025:2005 and ISO Guide 65:1996. However, the principles in the ANSI document are more closely related to product certification, and thus, are not appropriate for laboratories involved in support of children's product certification by the manufacturer. For example, conformity assessment principle number 12 in the ANSI document states: ''As appropriate, conformity assessment bodies undertake reasonable surveillance procedures to ensure continued product conformity and protection of their mark.'' Surveillance procedures and certification marks are activities typically undertaken by certification bodies, not laboratories conducting tests. Thus, we decline to recommend adopting the suggestion of using the ANSI document because it relates to certification activities not undertaken by testing.

(*Comment 6*)—Some commenters supported the use of ISO/IEC 17025:2005 as an accreditation tool but emphasized the importance of ensuring that the scope of accreditation applies only to the testing for which the conformity assessment body has demonstrated competence.

(*Response 6*)—We agree with the commenters. Every conformity assessment body applying for CPSC acceptance of their accreditation must submit a statement of scope that lists explicitly the CPSC regulation(s) and/or test method(s) for which they are applying.

(*Comment 7*)—Multiple commenters suggested adopting reciprocity provisions as a part of laboratory accreditation requirements. Reciprocity, in this context, means that if the CPSC accepts the accreditation of foreign laboratories to test consumer products for compliance to the requirements of section 14 of the CPSA, the host country of the foreign laboratory must provide similar treatment to U.S.-based laboratories. Possible reciprocity provisions could include a statement that, in reviewing a laboratory's application, the CPSC will take into consideration whether the host country of the applicant provides similar accreditation for U.S.-based laboratories in their markets. Another possible reciprocity policy would require that the countries of non-U.S.-based laboratories that wish for their accreditation to be accepted by the CPSC, offer recognition to U.S-based laboratories for that country's certification programs.

One commenter stated that a reciprocity provision would benefit U.S. manufacturers because reciprocity would allow for streamlined testing requirements and protocols across international markets and would also keep manufacturers from sending testing samples to multiple testing facilities around the world in order to ''shop'' for passing testing results. Another commenter stated that without reciprocity provisions, U.S.-based laboratories are damaged by not having access to other countries' conformity assessment systems. The commenter recommended that the CPSC amend its proposed accreditation requirements to include reciprocity provisions identical to those used by OSHA under its Nationally Recognized Testing Laboratory (NRTL) program.

One commenter stated that, without reciprocity provisions, the product safety scheme will lack the necessary shared interest in quality oversight to make it a functioning program.

(*Response 7*)—We decline to adopt reciprocity as a criterion in the CPSC third party conformity assessment body program, although we are aware that the other federal laboratory recognition programs contain such a provision. At this time, we have not determined that reciprocity promotes consumer safety. The mission of this agency is to protect the public against unreasonable risks of injury from consumer products. One way we accomplish that mission is by implementing the CPSIA's requirement that products subject to children's product safety rules be third party tested. Thus, our interest, in this instance, is to establish an effective and efficient laboratory program through which we recognize laboratories that are competent to conduct these third party tests.

As for the comment regarding shared interest in quality oversight, to the extent that the commenter is suggesting that reciprocity provisions are necessary for the CPSC's laboratory program to function, the commenter did not describe how or why having reciprocal testing-body recognition is necessary to implementing section 14 of the CPSA. We use accreditation by an ILAC–MRA signatory accreditation body to an international standard, ISO/IEC 17025:2005, and additional information, to determine whether to accept the accreditation of an applicant laboratory. Sections 1.4 and 1.6 of ISO/IEC 17025:2005 specifically refer to the quality management system of the laboratory. Laboratories accredited to ISO/IEC 17025:2005 must implement a quality management system, appoint a staff member as quality manager, and continually improve the effectiveness of its management system through the use of quality policy, quality objectives, audit results, and other factors. None of these quality oversight items requires reciprocity between nations.

B. Comments on Firewalled/Governmental Laboratories and Undue Influence

(*Comment 8*)—One commenter stated the belief that validation of a laboratory's independence is critical to the success of all CPSC safety initiatives, including program development for third party testing of children's products. The commenter pointed to OSHA's NRTL program and ISO Guide 65:1996 as a means to underscore the critical role of independence. ISO Guide 65:1996 details the requirements of operating without a conflict of interest and includes several requirements concerning organizational structure to protect impartiality and to prevent conflict of interest. The commenter suggested that the Commission should consider the requirements of Clause 4.2 of ISO Guide 65:1996 and look to OSHA's NRTL program as an example of the level of inquiry that should be required, the type of requirements that should be implemented, and to ensure impartiality and prevent conflict of interest.

The commenter noted that these issues deserve special emphasis for proprietary (firewalled) and governmental laboratories. Under the CPSC's laboratory accreditation requirements that were published in the notices of requirements and that are provided in additional detail in this proposed rulemaking, firewalled and governmental laboratories are required to demonstrate particular undue influence safeguards, as specified in the CPSA, in addition to the requirements of the ISO/IEC 17025:2005 standard.

(*Response 8*)—The OSHA program and ISO Guide 65:1996 are tailored to certification bodies/programs and not to laboratories that conduct tests. Under the structure of third party testing required by the CPSA (as amended by the CPSIA), product certification elements (certifying compliance with a CPSC rule) are the responsibility of the manufacturer or private labeler. The certifying manufacturer or private labeler must support its certificate of compliance with testing by a CPSC-accepted laboratory (referred to in the CPSA as third party conformity

assessment body). There are international standards written specifically for different areas related to conformity assessment (*e.g.,* inspection activities, certification programs, laboratories). Because the CPSA requires the CPSC to establish requirements for entities that conduct product testing, the CPSC programs require the ISO/IEC standard that is specifically applicable to testing laboratories (ISO/IEC 17025:2005). ISO/IEC 17025:2005 has provisions that require the laboratory to have policies and procedures to avoid involvement in any activities that would diminish confidence in its competence, impartiality, judgment, or operational integrity. A third party laboratory must demonstrate that it is impartial and that its personnel are free from any undue commercial, financial, and other pressures that might influence their technical judgment. ILAC–MRA signatory accreditation bodies assess laboratories to these criteria during laboratory assessments.

In addition, the CPSA requires that firewalled and governmental laboratories satisfy certain criteria, which include protections against undue influence. The CPSC implements those criteria, such that firewalled and governmental laboratory applicants must submit additional materials that address undue influence safeguards. For a full description of the additional application materials, see discussion of proposed § 1112.13(b) and (c) in section IV, B.2 of the preamble.

The criteria for safeguards against undue influence are addressed by the proposed CPSC requirements, and there should not be additional criteria based on programs or standards that are not specific for laboratories that conduct tests.

(*Comment 9*)—One commenter urged the CPSC to ''differentiate between what are authentic, third party conformity assessment bodies from manufacturer-owned, firewalled labs.'' The commenter stated that such differentiation would be consistent with widely used terminology in the manufacturing communities and would reflect the structure of the laboratories better.

(*Response 9*)—We interpret the commenter as addressing our use of the term ''third party conformity assessment body'' to refer to any of the three types of laboratories accepted by the CPSC (independent, firewalled, and governmental). To many in the consumer product industry, a ''third party conformity assessment body'' corresponds only to an independent laboratory.

Section 14(f) of the CPSA defines and discusses the term ''third party conformity assessment body'' to include all three types of laboratories. Accordingly, the notices of requirements, and this proposed rule, describe all laboratories whose accreditation has been accepted by the Commission as ''third party conformity assessment bodies,'' whether they are independent, governmental, or firewalled.

(*Comment 10*)—The notices of the requirements for accreditation of third party conformity assessment bodies require firewalled laboratory applicants to submit copies of training documents showing how employees are trained to notify the CPSC immediately and confidentially of any attempt by the manufacturer, private labeler, or other interested party to hide or exert undue influence over the third party conformity assessment body's test results. Some commenters suggested that the Commission develop standards for these training documents. A commenter noted that standards for impartiality are addressed in ISO Guide 65:1996, which, as a starting place, could be used for this purpose. A commenter also suggested that the CPSC, in developing standards for training documents, consider other standards or best practices that are protective of laboratory and test result integrity.

(*Response 10*)—The CPSA includes a provision that requires all CPSC-accepted firewalled laboratories to establish procedures to ensure that employees may report immediately and confidentially allegations of undue influence to the CPSC, 15 U.S.C. 2063(f)(2)(D). The notices of requirements have required firewalled laboratory applicants to submit copies, in English, of their training documents showing how employees are trained on those procedures. This proposed rule would continue that requirement.

A team of CPSC staff reviews applications from firewalled laboratories, including the submission of training documents. If the team concludes that the application materials satisfy the statutory requirements for acceptance as a firewalled conformity assessment body, the team recommends the applicant for Commission acceptance. Thus far, the training documents submitted by firewalled laboratory applicants have indicated clearly whether section 14(f)(2)(D) of the CPSA has been satisfied. However, the CPSC will consider this suggestion as we review future applications from firewalled laboratories. Should we determine that establishing standards for training documents would be helpful, we will consider the criteria for impartiality in other standards and best practices.

We note that accreditation bodies play a role in ensuring impartiality of firewalled laboratories as well. Section 4.1.5(b) of ISO/IEC 17025:2005 requires that the laboratory ''have arrangements to ensure that its management and personnel are free from any undue internal and external commercial, financial and other pressures and influences that may adversely affect the quality of their work.'' Note 2 under § 4 of ISO/IEC 17025:2005, *Management Requirements,* states:

> If the laboratory wishes to be recognized as a third party laboratory, it should be able to demonstrate that it is impartial and that it and its personnel are free from any undue commercial, financial and other pressures which might influence their technical judgment. The third party testing or calibration laboratory should not engage in any activities that may endanger the trust in its independence of judgment and integrity in relation to its testing or calibration activities.

The accreditation body evaluates the laboratory regarding this provision during the initial assessment and during each reassessment. Thus, the firewalled laboratory's accreditation body also evaluates the policies and procedures by which the laboratory avoids activities that would diminish confidence in its impartiality.

To the extent that these commenters also intended to suggest that the CPSC apply standards to the training documents submitted by government laboratory applicants, we note that, to date, the CPSC has not requested that governmental laboratory applicants submit training documents. Nor are we proposing in this rule that governmental laboratory applicants submit training documents to the CPSC. Sections 14(f)(2)(D)(ii)(II) and (III) of the CPSA specifically require that applicants for firewalled status have established procedures to ensure that, *inter alia,* the CPSC is notified immediately of any attempt at undue influence and that allegations of undue influence may be reported to the CPSC confidentially. To implement those provisions, we require firewalled applicants to submit training documents so that we can ensure that these safeguards have been communicated to employees. The statute does not require governmental laboratories to have established policies that involve employees notifying the CPSC immediately and confidentially of an attempt at undue influence. Thus, we are not requiring training documents from governmental laboratory

applicants in support of such requirements. Instead, the CPSIA established five criteria that each governmental applicant must satisfy to have its accreditation accepted by the CPSC. To implement those criteria, the proposed rule would require a governmental laboratory applicant to submit responses to a questionnaire, a description of its relationship with other entities, an attestation, and the laboratory's undue influence policy. For more information on those requirements, see the discussion of proposed § 1112.13(c) in section IV.B.2 of the preamble.

(*Comment 11*)—Some commenters recommended that the Commission establish safeguards to ensure that employees who are engaged in conformity assessment activities are not rewarded for positive outcomes of testing.

(*Response 11*)—We agree that a third party conformity assessment body should not reward an employee for a ''passing'' test result. The notices of requirements have required, and this proposed rule would continue requiring, that CPSC-accepted laboratories be accredited to the provisions in ISO/IEC 17025:2005 by a signatory to the ILAC–MRA. Section 4.1.5(b) of ISO/IEC 17025:2005 states that the laboratory shall ''have arrangements to ensure that its management and personnel are free from any undue internal and external commercial, financial, and other pressures and influences that may adversely affect the quality of their work.'' The laboratory's accreditation body checks for conformance to this section of ISO/IEC 17025:2005 during initial accreditation and each reassessment. Therefore, we consider the commenters' suggestion to be addressed already in the ISO/IEC 17025:2005 requirements, and therefore, additional CPSC requirements are not warranted.

(*Comment 12*)—One commenter, who responded to several notices of requirements, suggested that we require applicants, including the firewalled and governmental laboratories, to submit the evidence used to validate the fulfillment of § 4.1.5(b) of ISO/IEC 17025:2005, as part of their application to the CPSC to assure impartiality and avoid undue influence. The commenter argued that this information is particularly necessary because the requirements for firewalled laboratories to submit documents related to staff training on undue influence ''are not sufficient on their own to pro-actively assure the Commission about the impartiality of a firewalled (or government) laboratory.'' The commenter contended that requiring evidence of the fulfillment of § 4.1.5(b) of ISO/IEC 17025:2005 would drive accreditation bodies and laboratories to pay more specific attention to ISO/IEC 17025:2005 § 4.1.5(b); promote consistency; and provide the CPSC with a means of monitoring compliance.

(*Response 12*)—We believe that requiring applicants to submit records used to validate the fulfillment of § 4.1.5(b) of ISO/IEC 17025:2005 to the CPSC is unnecessary. It is the role of the laboratory's accreditation body to evaluate whether a laboratory satisfies the requirements of ISO/IEC 17025:2005; it would be duplicative for the CPSC to perform the same evaluation. Accreditation bodies have the expertise to evaluate laboratories to all provisions of ISO/IEC 17025:2005, including § 4.1.5(b).

With regard to the suggestion that, if the CPSC required submission of the evidence of compliance with § 4.1.5(b) of ISO/IEC 17025:2005, accreditation bodies and laboratories would pay more specific attention to that requirement, we believe that accreditation bodies garner significant attention from laboratories. If a laboratory failed to meet the requirements of ISO/IEC 17025:2005 to the satisfaction of its accreditation body, the laboratory could lose its accreditation and a potentially significant portion of its business.

With regard to the suggestion that submission of the records used to validate fulfillment of ISO/IEC 17025:2005 § 4.1.5(b) would promote consistency among laboratories, we respond that currently, we do not perceive any need to do so. The Commission has decided to designate laboratory accreditation to ILAC–MRA signatories, per section 14(a)(3)(C) of the CPSA. At this time, we are not aware that this designation has resulted in problems regarding undue influence. Requiring submission of the records used to validate the fulfillment of ISO/IEC § 4.1.5(b) would impose a burden on the CPSC and laboratories, without corresponding benefit. Finally, we note that fulfillment of the requirements of ISO/IEC 17025:2005 § 4.1.5(b) may be achieved in a number of ways. Decreasing variability in how laboratories fulfill that requirement would not necessarily increase protection against undue influence.

With regard to the suggestion that the submission of records used to validate fulfillment of ISO/IEC 17025:2005 § 4.1.5(b) would promote consistency among accreditation bodies, the ILAC–MRA evaluation process of an accreditation body involves a team of peer review members drawn from multiple accreditation bodies located around the world. This multi-member team arrangement tends to harmonize how the requirements of § 4.1.5(b) of ISO/IEC 17025:2005 are fulfilled around a common set of principles shared by the globally distributed team members.

With regard to the suggestion that requiring the submission of evidence of the fulfillment of ISO/IEC 17025:2005 § 4.1.5(b) to the CPSC would provide us with a means of monitoring compliance, we do not agree. Records related to accreditation assessments and reassessments are maintained by the accreditation bodies and the laboratories. The final rule on the audit requirements (implementing § 14(i)(1) of the CPSA) requires a third party conformity assessment body to retain records relating to the last three reassessments conducted by the accreditation body and make such records available to the CPSC upon request. Records of nonconformities related to safeguards against undue influence (or any ISO/IEC 17025:2005 requirement) and the corrective actions must be made available to the CPSC upon request. Accordingly, we already have a means of monitoring compliance with this and every other provision in ISO/IEC 17025:2005.

With regard to the commenter's particular concern with firewalled and governmental laboratories, CPSC acceptance of these types of laboratories requires the submission and evaluation of additional information specifically dealing with avoiding undue influence. Proposed § 1112.13(b) and (c) provide details of the additional documentation we would require for CPSC acceptance of the accreditation of firewalled and governmental laboratories.

The proposed rule would require these additional application materials from firewalled and government laboratories because we expect that they will provide us with helpful information concerning the structure and independence of these applicants.

(*Comment 13*)—Another commenter similarly pointed out that independent laboratories can ''easily'' satisfy ISO/IEC 17025:2005 § 4.1.5(b) but stated that the application of this requirement to firewalled and governmental laboratories ''poses issues of commercial, financial, and political pressures.'' The commenter suggested that the CPSC impose ''additional audit requirements and accreditation decisions'' on firewalled and government laboratories, and that the CPSC require from such applicants ''additional application information * * * which should include, but not be

limited to, extensive public disclosure of both manufacturer and/or government laboratory personnel involved in the testing of the relevant product(s).''

(*Response 13*)—The commenter did not specify what additional audit requirements or accreditation decisions it thought the CPSC should impose. However, with regard to this commenter's recommendation that the CPSC require additional application materials from firewalled and governmental applicants, as explained in the response to Comment 10, the proposed rule would require such materials.

We decline the suggestion to require extensive public disclosure of manufacturer and/or government laboratory personnel. We consider that mandating such disclosure would constitute an invasion of personal privacy that would be unwarranted when balanced against the public interest in the information. *See Horowitz* v. *Peace Corps,* 428 F.3d 271 (DC Cir. 2005) (''we must balance the private interest involved [namely, 'the individual's right of privacy'] against the public interest'').

(*Comment 14*)—Some commenters suggested that the sampling frequency of firewalled laboratories should be double that of independent conformity assessment bodies. Although it was not clear from the submissions, these commenters may have been suggesting that the government laboratories also test twice as many samples as independent laboratories.

(*Response 14*)—Section 14(a)(2) of the CPSA requires that a manufacturer of a children's product subject to a children's product safety rule submit ''sufficient samples of the children's product, or samples that are identical in all material respects to the product,'' to a third party conformity assessment body for testing. Under the requirement of the statute, then, it is the manufacturer, as opposed to the laboratory, who determines what sample is provided to the laboratory for testing, and the agency has no authority to transfer responsibility for determining sample size to the laboratories. The CPSC has addressed the sufficiency of the number of samples required under section 14(a)(2) of the CPSA in the final rule, *Testing and Labeling Pertaining to Product Certification.* 76 FR 69482 (November 8, 2011).

(*Comment 15*)—Some commenters also suggested that firewalled laboratories be required to meet additional requirements, such as:

- Public disclosure that the manufacturer has a financial interest or ownership stake in the laboratory;
- Submission of materials that identify whether employee compensation or annual bonuses (including stock options) are tied to the financial performance of the controlling manufacturer;
- Submission of detailed protocols by which the engineering staff of the firewalled laboratory do not either transfer from or transfer to the manufacturer's staff, or otherwise look to the manufacturer for career advancement; and
- Evidence that employees are required to participate, and regularly pass, third party ethics and compliance audits and programs intended to detect and protect against undue influence. The International Federation of Inspection Agencies (IFIA) Compliance Code was mentioned as a possible standard. Employees should also be required to submit to any programs established by the manufacturer/firewalled laboratory, including training, reporting, monitoring, investigating, and enforcement, intended to protect against and detect undue influence.

(*Response 15*)—With regard to the suggestion that the CPSC require firewalled laboratories to publicly disclose that the manufacturer has a financial interest or ownership stake in the laboratory, section 14(f)(2)(D) of the CPSA provides that a firewalled laboratory may be accepted by the Commission only if the Commission, by order, makes certain findings concerning the firewalled laboratory. The orders of the Commission accepting the accreditation of firewalled laboratories are public and are posted on the CPSC's Web site. Accordingly, there is public disclosure of each firewalled laboratory applicant at the time the Commission votes on whether to accept the firewalled laboratory's accreditation. (*See, e.g., http://www.cpsc.gov/library/foia/foia10/brief/firewalled.pdf).*

With regard to the suggestions that firewalled laboratories be required to identify whether employee compensation or annual bonuses (including stock options) are tied to the financial performance of the controlling manufacturer, and that the CPSC require submission of detailed protocols by which the engineering staff of the firewalled laboratory do not either transfer from or transfer to the manufacturer's staff or otherwise look to the manufacturer for career advancement, we do not believe that such information would be dispositive. The core concern is whether the testing process will be tainted, and this concern drives the provisions that were in the notices of requirements, as well as the provisions in this proposed rule, which seek to ensure that the testing process is protected against undue influence. As explained in the response to Comment 16, we are proposing to expand the definition of ''firewalled laboratory,'' and we are requiring more information from those entities about safeguards against undue influence.

As we have noted in the responses to Comments 10 and 11, § 4.1.5(b) of ISO/IEC 17025:2005 requires that the laboratory have arrangements to ensure that it is free from undue influence. The accreditation body evaluates the laboratory's fulfillment of this provision at the initial accreditation and at each reassessment. Further, section 14(f)(2)(D)(ii) of the CPSA requires the Commission, by order, to find that the conformity assessment body has established procedures to ensure that its test results are protected from undue influence by the manufacturer, private labeler, or other interested party. Because multiple entities are evaluating the means by which the firewalled laboratory avoids undue influence by the manufacturer, additional application requirements for firewalled applicants are not seen as necessary at this time. At a future date, we may consider additional requirements for firewalled laboratories in response to evidence that the prevailing requirements are not effective.

Finally, as for the suggestion that we require evidence that employees are required to participate, and regularly pass, third party ethics and compliance audits and to submit to any programs established by the manufacturer/firewalled laboratory intended to detect and protect against undue influence, we decline to adopt this suggestion. Under the proposed rule, a firewalled laboratory applicant would be required to submit, among other things, copies of training documents, including a description of the training program content), showing how employees are trained to notify the CPSC immediately and confidentially of any attempt by the manufacturer, private labeler, or other interested party to hide or exert undue influence over the third party conformity assessment body's test results; and training records (including training dates, location, and the name and title of the individual providing the training), listing the staff members who received the required training. At this time, we believe that requiring these training records sufficiently addresses our interest in ensuring that firewalled laboratory personnel are adequately trained in detecting and protecting against undue influence. Again, however, we will continue to consider this suggestion, and if additional requirements concerning undue influence-related training of laboratory

personnel would be helpful, we may recommend adopting additional training requirements in the future.

(*Comment 16*)—Other commenters expressed concern about the situation in which a laboratory and a manufacturer are owned by the same parent company. The commenter urged the Commission to expand the definition of ''firewalled laboratories'' to cover common parentage of laboratories.

The commenter suggested further that the definition of ''firewalled laboratories'' be extended to include laboratories that do 50 percent or more of their business with a single manufacturer or private labeler of children's products.

(*Response 16*)—We agree that if a laboratory and a manufacturer share a common corporate parent, and the laboratory intends to test the manufacturer's children's products for certification purposes, the laboratory should be considered a firewalled laboratory. The proposed rule would address the situation of common parentage in the definition of a ''firewalled laboratory.'' The proposed rule would have an applicant attest to whether it satisfies any aspect of the definition of a ''firewalled laboratory.'' One attestation concerns common parentage; the applicant would need to attest to whether it is affiliated with a manufacturer or private labeler of the children's product. ''Affiliated with'' would mean that the conformity assessment body is in the same ownership network as a manufacturer or private labeler of the children's product, with the exception that ''affiliated with'' does not include a manufacturer or private labeler of the children's product that is owned, managed or controlled by the conformity assessment body.

We considered the potential controlling effect of manufacturers with a significant part of a laboratory's business, and concluded that evaluating such a factor would be challenging administratively and difficult to verify. Variables such as the time period and types of products to consider could have a significant impact on any calculation of a percentage of a laboratory's business.

However, the proposed rule would address management and/or control of a laboratory by a manufacturer or private labeler by including in the definition of ''firewalled laboratory,'' laboratories over which a manufacturer or private labeler has the ability to appoint a majority of the laboratory's senior internal governing body; the ability to appoint the presiding official of the laboratory's senior internal governing body; or the ability to hire, dismiss, or set the compensation level of laboratory personnel. Another proposed aspect of this definition would be to deem ''firewalled,'' a laboratory that is under contract to a manufacturer or private labeler, such that the contract limits explicitly the services that the laboratory may perform for other customers or limits explicitly which or how many other entities may be customers of the laboratory.

(*Comment 17*)—A commenter suggested that, as a requirement for accreditation, we consider accrediting only manufacturer-controlled laboratories that agree that their entire organization, including the firewalled laboratories, will be held strictly liable for defective products. For foreign governmental laboratories, the commenter suggested that we require, as a condition of accreditation, that any foreign governmental lab that seeks to test and certify products be required to agree to submit to the jurisdiction of U.S. regulatory agencies and U.S. courts without asserting claims of sovereign immunity or other defenses seeking to limit their liability.

(*Response 17*)—We decline to adopt the commenter's suggestions. The statutes enforced by the Commission are structured to assign liability to culpable persons or entities. To the extent that by ''entire organization,'' the commenter means that the manufacturer owns, manages, or controls the firewalled laboratory, potential liability already exists under the statutes enforced by the Commission. It would be redundant to require the laboratory to agree to such liability as a condition of becoming accepted by the CPSC. To the extent that the commenter intends to suggest that the firewalled laboratory itself be held liable, we do not have the authority to assign liability to an entity that is not already culpable under the law.

With regard to the suggestion that we require foreign governmental laboratories to agree to submit to the jurisdiction of U.S. regulatory agencies and courts without asserting claims of sovereign immunity, or asserting other bases for limiting their liability, such actions are beyond the scope of our laboratory accreditation authority.

(*Comment 18*)—One commenter advised the Commission to ''consider the liability implications that may arise from accrediting a firewalled or foreign governmental laboratory in the event that one of those laboratories permits an unsafe product [to] enter the U.S. marketplace, as well as the legal remedies thereto.''

(*Response 18*)—We interpret the commenter as expressing concern that there may be obstacles to the CPSC holding CPSC-accepted firewalled and foreign governmental laboratories legally accountable for the tests they conduct. Section 14(f) of the CPSA establishes that firewalled and governmental laboratories may be accredited by the Commission to conduct third party tests of children's products. We wish to assure this commenter that we pursue available legal remedies against entities that permit unsafe products to enter the U.S. marketplace. We also note that, under the proposed rule, the Commission would be able to withdraw its acceptance of a laboratory on such grounds as the laboratory failed to comply with the requirements of subpart B of the proposed rule, and/or if the laboratory succumbs to undue influence.

(*Comment 19*)—One commenter suggested that we require assessments of a laboratory's independence and freedom from undue influence annually, or at least require that these assessments coincide with other reassessment and surveillance visits.

(*Response 19*)—We agree that a laboratory's independence should be reassessed on a regular basis. The final rule on audit requires that the reassessment portion of an audit, which is conducted by the accreditation body, include an examination of the laboratory's management system to ensure that the laboratory is free from any undue influence.

In addition to a laboratory's reassessment visits, surveillance visits can be conducted by accreditation bodies during the period between reassessments. Surveillance visits are assessments that are conducted for a particular purpose, such as to follow up on a previously observed problem or to ensure that a newly accredited laboratory has implemented necessary procedures. Surveillance visits may or may not be conducted for purposes of reviewing the impartiality of a laboratory, and thus, may or may not involve a reassessment of a laboratory's impartiality.

(*Comment 20*)—A commenter suggested that there is no objective basis for assessing the additional application materials submitted by governmental conformity assessment bodies.

(*Response 20*)—We interpret the commenter's suggestion as urging the Commission to issue objective standards for assessing these applications. Section 14(f)(2) of the CPSA, as amended by section 102 of the CPSIA, establishes five criteria which, in addition to the baseline requirements, a third party conformity assessment body owned or controlled, in whole, or in part, by a

government must satisfy. These criteria are:

(i) to the extent practicable, manufacturers or private labelers located in any nation are permitted to choose conformity assessment bodies that are not owned or controlled by the government of that nation;

(ii) the entity's testing results are not subject to undue influence by any other person, including another governmental entity;

(iii) the entity is not accorded more favorable treatment than other third party conformity assessment bodies in the same nation who have been accredited under this section;

(iv) the entity's testing results are accorded no greater weight by other governmental authorities than those of other third party conformity assessment bodies accredited under this section; and

(v) the entity does not exercise undue influence over other governmental authorities on matters affecting its operations or on decisions by other governmental authorities controlling distribution of products based on outcomes of the entity's conformity assessments.

15 U.S.C. 2063 (f)(2)(B) of the CPSA.

In order for us to evaluate whether a governmental laboratory applicant satisfies the statutory criteria, we have developed a standard questionnaire and requests for documentation that each governmental laboratory applicant is asked to complete. The questionnaire accompanies the proposed rule as part of the CPSC's Paperwork Reduction Act package, and the required documents are described in proposed § 1112.13(c)(2). In addition, CPSC staff reviews governmental laboratory applications using a standardized review document that provides grounds and reasoning for a finding relative to each of the five statutory criteria. These standardizations provide increased objectivity to the application review process, and the questionnaire and documentation requirements are being published via this proposed rule.

(*Comment 21*)—Some commenters that are foreign governments contended that, rather than assess additional application materials before acting on a governmental laboratory application, we should accept each governmental laboratory applicant, unless there is evidence that the applicant fails to satisfy the statutory criteria. The commenters argued that our approach is not fair and is inconsistent with the principal of impartiality expressed in the statutory criterion, which requires that the applicant laboratory ''is not accorded more favorable treatment than other third party conformity assessment bodies in the same nation who have been accredited.''

The commenters also argued that our approach violates the ''mutual recognition principle of conformity assessment procedures'' under the international treaty, ''Agreement on Technical Barriers to Trade'' (TBT Agreement). The commenters also invoked article 6.3 of the TBT Agreement, which encourages members to negotiate agreements for the mutual recognition of conformity assessments, and the commenters suggested additional consultations on these issues.

One commenter raised several issues under the World Trade Organization's TBT Agreement. The commenter stated that Article 2.4 of the TBT Agreement requires members to use relevant international standards (if they exist) as a basis for their technical regulations and said that ISO 9239–1, *Reaction to fire tests for floorings—Part 1: Determination of the burning behavior using a radiant heat source,* ISO 9239–2, *Reaction to fire tests for floorings—Part 2: Determination of flame spread at a heat flux level of 25 kW/m2,* and ISO 6925, *Textile floor coverings—Burning behavior—Tablet test at ambient temperature,* ''contain specifications to fire tests for floorings.'' The commenter said that these international standards ''would be an effective and appropriate means for the fulfillment of the objective pursued by CPSC.''

Finally, another commenter referred to Article 5.1.2 of the TBT Agreement to state that ''conformity assessment procedures shall not be more strict than necessary to give the Importing Member adequate confidence that products conform to the applicable technical regulations or standards.'' The commenter also cited Articles 2.4, 2.5, 2.9.3, 5.4, and 5.6.3 of the TBT Agreement and asked us to ''identify parts, if any, of the new regulation which in substance deviate from relevant international standards and to explain why such deviation has become necessary.''

(*Response 21*)—To the extent that these commenters are suggesting that our approach has been partial to nongovernmental laboratory applicants, we acknowledge that there are criteria imposed by the CPSIA that apply only to governmental laboratory applicants. We have chosen to determine whether the criteria are satisfied before acting on each application. Similarly, we have not accepted any firewalled laboratory applicant without determining first that it satisfies the statutory criteria relevant to that type of laboratory (*see* section (f)(2)(D) of the CPSA). We have chosen to defer action on governmental and firewalled laboratory applications until we determine that the statutory criteria are satisfied because we want to ensure that CPSC-accepted third party conformity assessment bodies have the structures and practices required by the statute to avoid undue influence, or any other interference with, or compromise to, the integrity of the testing process. This is consistent with the goal of the CPSIA that children's products that enter the U.S. marketplace have been tested by a competent and unbiased laboratory.

We do not agree that this approach is unfair. Because neither governmental nor firewalled laboratories are independent entities, both are potentially subject to undue influence from the organizations to which they are connected, which have interests beyond product testing. The CPSIA imposes additional requirements on firewalled and government laboratories so that only laboratories that are arranged to avoid undue influence sufficient to satisfy the statutory criteria may be accepted. We remain committed to implementing the conformity assessment program established by the CPSIA fairly and with the primary goal of product safety in mind.

The notices of requirements have not contradicted the TBT Agreement. We are willing to accept laboratories recognized by foreign governments if the laboratories satisfy the statutory requirements, including the five statutory criteria listed above (as long as the laboratory satisfies the baseline criteria) in the case of laboratories owned or controlled in whole, or in part, by a government. In fact, we have accepted the accreditations of several governmental laboratories, and we have applied the same statutory criteria to governmental laboratories, regardless of whether the governmental laboratory was located in a foreign country or in the United States. (Indeed, we note that the definition of ''government participation'' in section 14(f)(2)(B) of the CPSA (for purposes of a ''third party conformity assessment body'') is not limited to foreign governments.) The CPSC consults extensively with laboratories seeking to become accepted to test products under section 14 of the CPSA. We remain open to further consultation on these issues with any interested laboratory applicant.

With respect to specific articles in the TBT Agreement, the commenter addressing Article 2.4 of the TBT agreement may have misinterpreted the notice of requirements. The notice of requirements simply establishes the conditions under which the CPSC will accept the accreditation of a third party conformity assessment body to test a children's product for compliance with a particular children's product safety rule. The notice of requirements does

not affect the regulations pertaining to the children's product itself.

Similarly, the commenter addressing Article 5.1.2 of the TBT agreement may have misinterpreted the notice of requirements. This commenter was responding to the notice of requirements pertaining to 16 CFR part 1630, *Standard for the Surface Flammability of Carpets and Rugs (FF 1–70)* and/or part 1631, *Standard for the Surface Flammability of Small Carpets and Rugs (FF 2–70)* (See 75 FR 42315 (July 21, 1010)). The notice of requirements for 16 CFR parts 1630 and/or 1631, however, did not affect or alter the standards established or test methods required in 16 CFR parts 1630 and/or 1631. It simply informed laboratories of the process and requirements by which they could apply to test children's products according to the test method detailed in parts 1630 and/or 1631. A laboratory that has been ISO/IEC 17025:2005-accredited by an ILAC–MRA signatory to conduct flammability tests for floor coverings pursuant to a standard other than 16 CFR parts 1630 and/or 1631 that has similar test methods would likely not find it difficult to expand its accreditation scope with its accreditation body to include 16 CFR parts 1630 and/or 1631 and subsequently apply to the CPSC to test children's products subject to these regulations.

Moreover, consistent with Article 5.1.2 of the TBT Agreement, the notices of requirements have not established procedures and requirements for laboratories that are more strict than necessary to give the CPSC adequate confidence that children's products tested by CPSC-accepted laboratories conform to applicable CPSC standards, regulations, rules, or bans. We are unclear which relevant international standards the commenter would like us to compare the notices of requirements and explain why differences between the two are necessary. To the extent that the commenter is asking for differences between various substantive safety standards, we again note that the notices of requirements do not affect the underlying consumer product safety standard or children's product safety rule.

C. Comments on the Suspension and/or Withdrawal of CPSC's Acceptance of Conformity Assessment Bodies

(*Comment 22*)—Some commenters suggested that if a third party conformity assessment body tested a product later found to be noncompliant with the applicable rules, that conformity assessment body should lose its accreditation temporarily. (We interpret ''lose accreditation'' to mean a loss of the CPSC's acceptance of their accreditation.) The commenters suggested varying loss schedules, depending on the type of laboratory, with increasing periods of suspension for repeat offenses. For firewalled and government laboratories, the commenters suggested that acceptance of their accreditation should be lost for three months after the first offense, six months after the second offense, one year after the third offense, and permanent loss for four offenses over a 2-year period. For independent laboratories, the commenters suggested a written warning after the first offense, a 1-month loss after the second offense, a 3-month loss after the third offense, and upon the fourth offense, the CPSC would reevaluate the laboratory's practices, and the accreditation body would conduct a reassessment.

(*Response 22*)—We decline to adopt the suggestion that laboratories lose CPSC acceptance of their accreditation (either for a specified time or permanently) after noncompliant products associated with the laboratories' test reports are found in the marketplace. Factors independent of the laboratory may have led to the presence of noncompliant products. For example, poor process control by the manufacturer after certification could lead to some noncompliant products being produced after the laboratory had tested compliant samples. As another example, a manufacturer may have made a material change to the product that affected the product's compliance, without sending samples for testing to a laboratory. Setting a withdrawal schedule based solely on the presence of noncompliant products would risk holding laboratories responsible for factors beyond their control and about which they had no knowledge.

In addition, we are not adopting a graduated system of penalties because we consider it preferable to deal with laboratory infractions on a case-by-case basis.

(*Comment 23*)—Some commenters suggested that we establish a defined system for ''de-listing'' a third party conformity assessment body ''for just cause.'' (We interpret ''de-listing'' to mean that the CPSC withdraws its acceptance of the laboratory's accreditation and removes the laboratory from the listing of accepted laboratories on the CPSC Web site *http://www.cpsc.gov/cgi-bin/labsearch*). The commenter provided examples of what would constitute ''just cause'':

- Evidence of conflict of interest or where there is undue influence by a manufacturer, a common parent company, or other party, that could have affected test results;
- A laboratory has been found to be incompetent to conduct required testing due to personnel or laboratory equipment changes; or
- A laboratory has a record of repeatedly certifying products that are later identified as noncompliant.

(*Response 23*)—We agree with the commenter that there should be greater clarity of what conduct or circumstances are sufficient for the agency to withdraw its acceptance of the accreditation of a third party conformity assessment body. Subpart D of the proposed rule would address adverse actions that the CPSC may take against a laboratory. These adverse actions would include: withdrawing CPSC acceptance of a laboratory's accreditation and removing the laboratory from the CPSC Web site listing of accepted laboratories. Proposed § 1112.47 would establish three basic grounds for withdrawal, which would include a manufacturer, private labeler, or governmental entity exerting undue influence on the laboratory or otherwise interfering with or compromising the integrity of the testing process. Proposed § 1112.41 would establish the procedures for withdrawal.

D. Comments on Specific Notices of Requirements

1. Lead Content in Children's Metal Jewelry

(*Comment 24*)—Another commenter requested an exclusion in the CPSC test method for determining total lead in children's metal products (including children's metal jewelry). The commenter suggested that samples of electroplated jewelry—for which the electroplating is a metal excluded from testing for lead (such as gold or silver)—not be required to contain the electroplating when tested. The commenter suggested the following change to procedures A.2 and B.2:

> Component parts of children's products, including metal jewelry items, generally weigh several grams or more, and an aliquot (with no paint or similar surface coating, but including any electroplated or other coating which is considered to be part of the substrate, excluding precious or other metals exempt from testing) will have to be obtained.

(*Response 24*)—We decline to make the suggested change to the CPSC test method, CPSC–CH–E1001–08, because test methods are an inappropriate place to list testing exclusions. The test method is limited to describing how to conduct a test, not whether a material should be tested.

The commenter is correct that an excluded material, such as gold of at least 10 karats, does not require testing for lead. On August 26, 2009, the Commission published in the **Federal Register**, a list of materials determined not to contain lead and excluded them from testing (74 FR, 43031). This created a new section, § 1500.91 of the *Hazardous Substances and Articles: Administration and Enforcement Regulations.*

If the commenter submits samples for testing without the electroplating, those test results, combined with the exclusion for a plating material (such as gold greater than 10 karats) could be used as the basis for issuing a Children's Product Certificate for a finished product consisting of units from the same lot or batch as the samples, plus the electroplating. However, once the electroplating occurs, the combination of the base material and the electroplating are considered one component part. If finished product samples are submitted for testing, the electroplating must be part of the tested specimen.

(*Comment 25*)—A commenter urged the CPSC to consider X-ray fluorescence (XRF) spectrometry as a valid testing option to screen for products with very low lead levels; more precise testing would be required if the uncertainty range of the instrument included the lead concentration limit.

Another commenter urged the CPSC to consider the use of a specific XRF technology, energy dispersive- X-ray fluorescence spectrometry (EDXRF), as a validated method for the testing of lead in substrates of consumer products. The commenter referred to interlaboratory testing that compared EDXRF technology to ''wet chemistry'' techniques (Inductively Coupled Plasma and Atomic Absorption Spectrometry) to measure lead in multiple substrates. The commenter opined that the economic and other benefits of using EDXRF over ''wet chemistry'' may be even more pronounced with application to the nondestructive measurement of lead in the substrate of product samples.

(*Response 25*)—The CPSC has accepted the use of certain types of XRF testing but only for certain polymeric materials and for paints. The CPSC test method, CPSC–CH–E1002–08 (and its revision, CPSC–CH–E1002–8.1), *Standard Operating Procedure for Determining Total Lead (Pb) in Non-Metal Children's Products,* includes an option for the use of XRF for the analysis of lead in certain polymeric materials. *See* 74 FR 55820 (Oct. 29, 2009) (notice of requirements for total lead in children's products); *see also* 76 FR 6765 (Feb. 8, 2011) (notice extending the stay of enforcement pertaining to total lead content in children's products [except for metal components of children's metal jewelry] until December 31, 2011). ASTM International, formerly the American Society for Testing and Materials (ASTM) test method, F2853–10, *Standard Test Method for Determination of Lead in Paint Layers and Similar Coatings or in Substrates and Homogeneous Materials by Energy Dispersive X–Ray Fluorescence Spectrometry Using Multiple Monochromatic Excitation Beams,* can be used for the analysis of lead content in paints (16 CFR part 1303). *See* 76 FR 18645 (Apr. 5, 2011) (revision to notice of requirements for lead paint).

This proposed rule also would allow the use of XRF to determine the lead content of glass materials, crystals, and certain metals. We will continue to evaluate improvements to technology and methods on an ongoing basis.

2. Total Lead in Children's (Metal and Non-Metal) Products

(*Comment 26*)—A commenter suggested that we expand the use of XRF beyond polymeric materials, to test paints and thin film coatings for the purposes of a manufacturer, importer, or retailer's providing certification. Another commenter said we should allow the XRF method described in ASTM F2853–10 to be used to measure lead content in multiple substrates, in addition to homogeneous polymeric materials.

(*Response 26*)—On April 5, 2011, we published a notice revising the requirements for accreditation of laboratories to test for lead in Paint. In that notice, the Commission approved the use of ASTM International (formerly the American Society for Testing Materials, ASTM) test method, F2853–10, *Standard Test Method for Determination of Lead in Paint Layers and Similar Coatings or in Substrates and Homogeneous Materials by Energy Dispersive X–Ray Fluorescence Spectrometry Using Multiple Monochromatic Excitation Beams,* for the analysis of lead content in paint. We have not determined that other XRF technologies are as effective, precise, or reliable as the methods described in the notice of requirements for compliance determinations of paints.

Additionally, the proposed rule (at proposed § 1112.15(b)(28), (29), and (30)) would allow the use of XRF to determine the lead content of glass materials, crystals, and certain metals. We will continue to evaluate improvements to technology and methods on an ongoing basis.

(*Comment 27*)—Another commenter suggested that, in addition to using a cryogenic mill for sample preparation, we should allow the test specimen to be cut into small representative pieces, with a maximum length in any dimension of 2.0 millimeters. The commenter also suggested a procedural change in the test method for determining lead in metals (CPSC–CH–E1001–08). The suggested change calls for the tester to observe when no particles are visible in one step and omits a heating period in another step.

(*Response 27*)—New revisions, dated June 21, 2010, of CPSC test methods: CPSC–CH–E1001–08.1 and CPSC–CH–E1002–08.1 have been posted on the CPSC's Web site. In test method CPSC–CH–E1002–08.1, the commenter's suggestion has been implemented. The sample preparation method instructs the tester to:

> Cut the test specimen into small pieces. Hard-to-digest plastics may need to be cryomilled to get finer powder. The minimum size is left to the discretion and flexibility of the tester for the material being evaluated.

With regard to the suggested change in test method CPSC–CH–E1001–08, we do not have sufficient proof that the method of not heating the acid to 60 degrees C (in step 6 of the Hot Block method), or using a longer time period, would result in consistent measurements. In addition to the Hot Block Method, we allow another testing method, based on the EPA's method 3051A2, which uses microwave digestion. Both methods are allowed in the revised test method, CPSC–CH–E1001–08.1.

3. 16 CFR Part 1303—Lead in Paint

(*Comment 28*)—Two commenters noted that the absence of a specified testing method in 16 CFR part 1303, *Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint,* leads to uncertainty and confusion among accreditation bodies and laboratories about which testing methods are adequate for meeting the requirements of the standard.

(*Response 28*)—We addressed these comments in a notice published in the **Federal Register** on April 5, 2011, in which we amended the notice of requirements for testing for lead paint (*see* 76 FR 18645). The notice of requirements listed the test methods that are approved for compliance determination: CPSC–CH–E1003–09, CPSC–CH–E1003–09.1 and/or ASTM

F2853–10 (which uses a specific type of XRF technology).

(*Comment 29*)—A commenter encouraged us to continue to ensure that the current ASTM F40 Committee (Declarable Substances in Materials) review process of a proposed standard method for lead in paint using traditional XRF technologies undergoes the same rigorous scientific and statistical requirements as we used during the ASTM F2853–10 standard method development process.

(*Response 29*)—We will continue to evaluate improvements to technology and methods on an ongoing basis. We have not determined that other XRF technologies are as effective, precise, or reliable as the methods described in the notice of requirements for determination of the lead content in paint.

4. 16 CFR Parts 1630 and 1631—Carpets and Rugs

(*Comment 30*)—A commenter requested that we continue the stay with respect to handmade ''Oriental'' carpets. The regulation at 16 CFR 1630.2(b) states: ''[o]ne of a kind, carpet or rug, such as an antique, an Oriental, or a hide, may be excluded from testing under this Standard pursuant to conditions established by the Consumer Product Safety Commission.'' There is a corresponding regulation applying to small carpets and rugs at 16 CFR 1631.2(b). The commenter noted that we have not established such conditions, and encouraged us to do so. Pending the establishment of the conditions, the commenter sought a continuation of the stay.

(*Response 30*)—We decline to continue (or reinstitute) the stay for handmade ''Oriental'' carpets. With regard to children's products, publication of the notice of requirements regarding carpets and rugs on July 21, 2010 had the effect of lifting the stay. With regard to non-children's products, we announced the lifting of this stay, effective January 26, 2011. 75 FR 81236, December 27, 2010. The CPSIA was enacted in August 2008; the carpets and rugs industry had ample opportunity to prepare for the law's testing and certification requirements.

In the years since the flammability regulations at 16 CFR parts 1630 and 1631 were promulgated, we have handled, on an individual basis, requests for exclusion of one-of-a-kind carpets or rugs. The commenter is correct that we have not formally established the conditions under which a carpet or rug would be excluded under 16 CFR 1630.2(b) and/or 1631.2(b), but such matters are outside the scope of this rulemaking.

(*Comment 31*)—Some commenters recommended that we support and approve the testing of flammability of carpets and rugs by laboratories accredited by the National Voluntary Laboratory Accreditation Program (NVLAP). One commenter added that this should also include ''internal'' laboratories. The commenters expressed the opinion that that the existing procedures (testing methods, protocols, and recordkeeping requirements) in FF 1–70 (16 CFR part 1630) and FF 2–70 (16 CFR part 1631) are effective in protecting consumers and children and that no additional safety benefit is gained by ''different testing protocols.'' One commenter expressed the belief that the requirement for accreditation of third party conformity assessment bodies to assess conformity with 16 CFR parts 1630 and/or 1631 will only add costs, with no additional safety benefits, for children's carpet and rug products.

(*Response 31*)—It is common for U.S. laboratories that test carpets and rugs in accordance with 16 CFR part 1630 and/or 1631 to be ISO/IEC 17025:2005-accredited by NVLAP. Because NVLAP is a signatory to the ILAC–MRA, it may be a Commission-designated accreditation body, as prescribed in the notices of requirements. Several NVLAP-accredited laboratories have been accepted and posted on our Web site for testing to 16 CFR parts 1630 and 1631. Worldwide, there are more than 25 CPSC-accepted laboratories for 16 CFR part 1630 and/or 16 CFR part 1631 (with several different ILAC–MRA accreditation bodies represented). Thus, NVLAP accreditation is not inconsistent with CPSC acceptance of third party conformity assessment bodies (laboratories) for testing to 16 CFR parts 1630 and/or 1631.

In response to the commenter who asked that we allow internal laboratories that are accredited by NVLAP, we interpret the comment as referring to laboratories that are owned by carpet or rug manufacturers. In these cases, the notice of requirements allows NVLAP accreditation to serve as a ''baseline'' requirement for CPSC acceptance. However, in accordance with the CPSA (as amended by the CPSIA), laboratories that are owned by a manufacturer of a product that is subject to the regulation for which it conducts tests must meet additional criteria for Commission acceptance as a firewalled third party conformity assessment body.

As for the commenters suggesting that the implementation of different testing protocols will provide no safety benefit, the notice of requirements makes no changes to the flammability test methods that appear in 16 CFR parts 1630 and 1631. The commenters may be referring to the language in section 14(a)(2) of the CPSA (as amended by the CPSIA) that the manufacturer ''must submit sufficient samples of the children's product, or samples that are identical in all material respects to the product,'' for testing by a CPSC-accepted third party conformity assessment body, and/or the CPSA language in section 14(i)(2)(B) related to Commission rulemaking for a continued testing program (including periodic and random sample testing, and compliance labeling). These ''testing protocols'' are required for children's carpets and rugs by the CPSIA and the recently issued final rule *Testing and Labeling Pertaining to Product Certification,* (76 FR 69482 (November 8, 2011) (to be codified at 16 CFR part 1107)).

(*Comment 32*)—One commenter asked whether conformity assessment bodies in its country that were accredited by a signatory to the ILAC–MRA and accredited to ISO 9239–1, 9239–2, and 6925 ''fulfill the requirements listed in 16 CFR parts 1630 and 1631'' or whether there are additional requirements that a conformity assessment body must meet to have CPSC accept its accreditation.

(*Response 32*)—The purpose of the CPSC's laboratory program is to authorize laboratories to conduct CPSC tests capable of supporting a Children's Product Certificate. Although there may be other product standards and test methods in existence, the purpose of this program is limited to conducting third party tests of children's products under section 14 of the CPSA. A laboratory must be accredited by an ILAC–MRA signatory to ISO/IEC 17025:2005 and must have the relevant CPSC regulation or test method in its scope of accreditation to apply successfully for CPSC acceptance of its accreditation. ISO 9239–1, 9239–2, and 6925 all specify methods for assessing the burning behavior of floorings and/or floor coverings. The CPSC regulations at 16 CFR parts 1630 and 1631 assess the surface flammability of carpets and rugs. To the extent that a laboratory was accredited to ISO/IEC 17025:2005, but it did not have 16 CFR part 1630 and/or 1631 in its scope of accreditation, it would not be eligible for acceptance by the CPSC to test children's products under 16 CFR part 1630 and/or 1631. The CPSC standards contain specific test methods for assessing compliance with CPSC requirements. Because other test methods do not assess for compliance with CPSC requirements, accreditation to such other test methods is not sufficient for CPSC acceptance of accreditation.

(*Comment 33*)—One commenter, a government agency, said that the notice of requirements raised serious concerns for the textile industry in its country and ''may imply new additional costly requirements.''

(*Response 33*)—We believe that the commenter may have misinterpreted the notice of requirements. The regulations pertaining to carpets and rugs have been in place for several decades, and the notice of requirements did not alter those regulations. To the extent that the commenter is expressing concern over the cost of third party testing for children's products, such a comment is beyond the scope of the proposed rulemaking because this proposed rule would establish requirements for laboratories, and it would not address testing costs associated with manufacturers.

5. Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children

(*Comment 34*)—A commenter suggested that we should accept evaluation results from certification bodies recognized by OSHA as a NRTL with UL 696 in their scope of recognition. According to the commenter, the requirements in UL 696 are ''nearly identical'' to those in 16 CFR part 1505.

(*Response 34*)—As explained more fully above in the response to Comment 2, in order to ensure a consistent, global approach toward CPSC acceptance of accredited laboratories, we have decided to consider acceptance only of laboratories accredited by ILAC–MRA signatory accreditation bodies.

In addition, and as explained in the response to Comment 31, concerning carpets and rugs, a laboratory that wishes to conduct tests upon which a manufacturer of a children's product subject to a particular rule may base a certificate of compliance, must have that particular rule listed in its scope of accreditation. This requirement ensures that the laboratory understands the CPSC regulation and test methods associated with the regulation and has been evaluated as competent to conduct that testing. Although UL 696 has been revised to be consistent with 16 CFR 1505, an NRTL laboratory with UL 696 in its scope of recognition must be accredited to ISO/IEC 17025:2005 by an ILAC–MRA signatory accreditation body to 16 CFR part 1505 before the laboratory may apply to the CPSC for acceptance of that accreditation.

6. 16 CFR Parts 1632 and 1633—Mattresses, Mattress Pads, and Mattress Sets

(*Comment 35*)—One commenter urged us to adopt a longer implementation period for third party testing under 16 CFR part 1632 and to broaden this notice of requirements' retrospective testing provisions.

(*Response 35*)—We already responded to this comment in a notice published in the **Federal Register** on November, 29, 2010 (75 FR 72944), in which we revised the retrospective testing provision applicable to third party testing under 16 CFR parts 1632 and 1633.

7. 16 CFR Part 1420—Youth All-Terrain Vehicles (ATVs)

(*Comment 36*)—One commenter supported our publication of the notice of requirements for ATVs, and they specifically offered support for the ''CPSC's analysis to determine whether an ATV is intended for a child and not just rely[ing] on what the ATV industry/manufacture[r] states that it is.'' Some commenters expressed safety concerns with ATVs. Two commenters (49A, 51C) suggested that the CPSC include Y–12+ model ATVs in the ''youth ATV'' category, along with the Y–6+ and the Y–10+ models. One commenter claimed that the CPSC is excluding the Y–12+ model from the category ''youth ATV.'' The commenter stated that because the models are intended to be used by 12 year olds, they should fall under the scope of the CPSIA's definition of a ''children's product.'' Both commenters noted that because the T model ATV is intended for children 14 years old and older, the Y–12+ model will be used primarily by children 12 and 13 years old.

(*Response 36*)—Section 232 of the CPSIA required us to establish 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) as a mandatory standard for four-wheel all-terrain vehicles.

This standard includes ''Category Y'' classifications, which are for off-road use by operators under age 16. These categories are: Y–6+, intended for use by children age 6 or older; Y–10+, intended for use by children age 10 or older; Y–12+, intended for use by children age 12 or older; and T, intended for use by children age 14 or older with adult supervision, and by persons age 16 or older. While we appreciate the comment that a significant percentage of the riders of the Y–12+ model will be children 12 years old, and not the children who are older than 12, no data were provided to support that statement.

We do not have data to indicate which portion of the ''12 or older'' category represents the rider of Y–12+ ATV models most. The CPSIA defines a ''children's product'' in § 3(a)(2) of the CPSA as:

> (2) CHILDREN'S PRODUCT.—The term ''children's product'' means a consumer product designed or intended primarily for children 12 years of age or younger. In determining whether a consumer product is primarily intended for a child 12 years of age or younger, the following factors shall be considered:
>
> (A) A statement by a manufacturer about the intended use of such product, including a label on such product if such statement is reasonable.
>
> (B) Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger.
>
> (C) Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger.
>
> (D) The Age Determination Guidelines issued by the Commission staff in September 2002, and any successor to such guidelines.

We cannot categorically include Y–12+ model ATVs as ''youth ATVs'' because the age range for that model includes children over the age of 12; however, the definition of a ''children's product'' is limited to products designed or intended primarily for children 12 years of age or younger. When it is unclear whether a product should be considered a children's product, we will apply the four factors. Different manufacturers may mark, package, and market their ATVs as primarily intended for children older than 12, or as primarily intended for 12 year olds. We will determine on a per-model basis, using the four factors listed above, whether a particular model Y–12+ ATV is primarily intended for use by children 12 years of age or younger (and is therefore considered a children's product in need of third party testing to support a certification). Indeed, some commenters commended the CPSC for applying the four statutory factors, rather than relying solely on the manufacturer's statements regarding whether an ATV is intended for a child.

The commenter is incorrect that we have excluded Y–12+ model ATVs from third party testing. In the notice of requirements that appeared in the **Federal Register** on August 27, 2010, we stated: ''for the purposes of this notice of requirements, the term 'youth' ATVs at a minimum refers to categories Y–6+ and Y–10+ in ANSI/SVIA 1–2007.'' (*See*

75 FR at 52616; emphasis added). Thus, we have indicated that the Y–12+ model may be considered for inclusion as a product that must meet third party testing requirements. Again, it will depend upon application of the four factors to a particular model.

On August 12, 2011, the President signed into law Public Law 112–28, which amended the CPSIA in several respects. One provision in PL 112–28 created an exception from the lead limits for off-highway vehicles. Consequently, ATVs, recreational off-highway vehicles, and snowmobiles are no longer subject to the lead limits in section 101 of the CPSIA. We also note that recently, a final rule revising 16 CFR part 1420, in which American National Standard ANSI/SVIA–1–2010 will become the new mandatory standard effective April 30, 2012, was published in the **Federal Register**. *See* 77 FR 12197 (February 29, 2012). This standard, which pertains to ATVs, is an updated version of the standard that was the subject of the notice of requirements that appeared in the **Federal Register** of August 27, 2010 (75 FR 52616).

(*Comment 37*)—One commenter requested that we extend the date on which ATV manufacturers must begin third party testing and certification. The commenter further requested that we consider additional forms of relief if there continues to be an insufficient number of CPSC-accepted laboratories.

(*Response 37*)—We responded to this comment in notices published in the **Federal Register** on December 9, 2010 (75 FR 76709) and February 1, 2011 (76 FR 5565), in which we first extended, and then conditionally stayed, third party testing for youth ATVs.

Additionally, as noted in the response to Comment 36, all-terrain vehicles, recreational off-highway vehicles, and snowmobiles are no longer subject to the lead limits in section 101 of the CPSIA.

8. Toys and ASTM F 963

(*Comment 38*)—Two entities submitted letters before we published the notice of requirements pertaining to ASTM F–963–08 (76 FR 46598 (August 3, 2011)), and these letters were placed in the administrative record as comments. For convenience, we will refer to the entities as commenters. (We did receive a third submission, but it appeared to be from a laboratory seeking to be listed as a third party conformity assessment body, rather than a comment on the notices of requirements.)

One commenter urged us to refrain from issuing a notice of requirements to ASTM F 963 because it said that requiring third party testing would ''dramatically and permanently harm small batch toymakers.'' The commenter sought an indefinite stay of enforcement of the third party testing requirements for ASTM F 963 or delayed publication of the notice of requirements. The commenter cited testing costs, the impact of a third party testing requirement relative to the production of toys for the holiday season, the complexity of ASTM F 963, and congressional consideration of changes to the CPSIA.

Another commenter expressed concern about ''potential confusion in the marketplace that may result from a lack of coordination between timing of the effective date'' of a third party testing requirement and revisions to the ASTM F 963 toy standard. It recommended that we set the effective date of third party testing requirements to coincide with an expected revision of the toy standard and the date on which the revision would become a mandatory standard (as provided by section 106 of the CPSIA). It also urged us to clarify that, in cases where requirements overlap between versions of the standard, manufacturers do not need to test to demonstrate compliance with both standards. The commenter also sought flexibility on the acceptance of retrospective testing because, it explained, delays in our acceptance of third party conformity assessment body accreditation could force ''redundant testing'' on manufacturers who seek to test to new or revised standards before their effective date.

(*Response 38*)—With respect to the request to refrain from issuing the notice of requirements or to issue an indefinite stay of enforcement, we note that the notice of requirements with regard to ASTM F–963 published in the **Federal Register** on August 3, 2011 (76 FR 46598), and therefore, this comment is moot. Thus, the request to refrain from issuing the notice of requirements is moot. We also decline to issue an indefinite stay of enforcement. We note, however, that the notice of requirements, as well as changes resulting from Public Law 112–28, have addressed some of the commenter's concerns. For example, in the notice of requirements pertaining to ASTM F–963, the Commission stated that it would ''stay enforcement of the testing and certification requirements of section 14 of the CPSA with respect to toys subject to ASTM F 963 until December 31, 2011'' (76 FR at 46601). Public Law 112–28 also provided some relief, specifically to small batch manufacturers, through the creation of a new section 14(i)(4) of the CPSA, which establishes ''special rules'' for small batch manufacturers that would result in alternative testing requirements or exemptions from third party testing.

As for the second commenter's concern about effective dates, revisions to the toy standard, and potentially ''redundant'' testing, we are sensitive to potential disruptions and confusion that may result when standards are revised. The notice of requirements acknowledges that we anticipated another revision to ASTM F–963 and invited comment on ''how to make the transition in testing requirements as clear and efficient as possible should the standard change'' (76 FR at 46599). The enactment of Public Law 112–28 has magnified the need to develop policies with respect to transitions in testing requirements when standards change, because Public Law 112–28 revised section 104 of the CPSIA to establish a process for subsequent revisions to voluntary standards for durable infant and toddler products. The resulting process is similar to that under section 106 of the CPSIA (which pertains to toys and ASTM F–963). The issuance of future notices of requirements, relative to revised or changing standards, is complicated further by the fact that, after August 14, 2011, all notices of requirements are subject to the rulemaking requirements in 5 U.S.C. 553 and 601 through 612 of the Administrative Procedures Act.

Nevertheless, we agree that ''redundant'' testing should not be necessary when the relevant provision in the toy standard has not changed, or not changed in a manner that would affect how testing is conducted between revisions. For example, assume that a provision in the 2008 version of the standard imposed a particular test on a toy. If the standards organization revised the standard in 2011, such that a provision in the revised 2011 standard imposes the same test as the 2008 standard or a ''functionally equivalent'' test to the 2008 standard on the toy, then we believe it would be unnecessary to require manufacturers to take toys that had been tested to the 2008 standard and retest them to the 2011 standard. (By ''functionally equivalent,'' we mean that the standards organization has made certain changes in the revised standard, as compared to the earlier standard, but the changes are not substantial, and they do not affect the associated conformance testing.) Similarly, we believe that it is unnecessary, and contrary to public policy, to expect third party conformity assessment bodies that have been accredited to conduct that particular test under the 2008 standard, to cease

testing until they are reaccredited to the 2011 standard. Therefore, in those situations where the provisions in a revised toy standard are equivalent or functionally equivalent to the provisions in the earlier standard, we will continue to accept the accreditation of those third party conformity assessment bodies, and manufacturers should continue to have their toys tested and to issue certificates based on such testing. Third party conformity assessment bodies whose accreditation we had accepted to the 2008 standard should notify us when they become accredited to the 2011 standard by submitting an application through Form 223 on the CPSC Web site, and we will update our listing accordingly.

9. Phthalates

(*Comment 39*)—One commenter expressed appreciation for our inclusion of two test methods for phthalates (a revised CPSC test method and a Chinese test method) in the notice of requirements, but they asked us to allow for other ''proven internal test methods.'' The commenter explained that testing laboratories may modify existing test methods or develop their own methods for testing for phthalates; accordingly, they assert that restricting the notice of requirements to two test methods could result in manufacturers retesting products and testing backlogs at test laboratories. The commenter said we should allow other methods ''as long as it can be shown that these are equivalent to the CSPC methods.'' The commenter said that equivalency could be shown through side-by-side comparisons with the CPSC method, method validation data, participation in interlaboratory studies, or other requirements established by the CPSC.

Another commenter supported our inclusion of the revised CPSC test method and Chinese test method, but they asked that we consider Health Canada's test method for total phthalate content in PVC products. The commenter said that recognizing the Canadian test method would reduce redundant testing further, by enabling firms to certify compliance with U.S. and Canadian phthalate requirements using one test.

(*Response 39*)—We are receptive to considering other test methods and to adding those methods to a notice of requirements. Indeed, as our own experience with phthalates testing demonstrates, we have revised or refined our test method several times and added the Chinese test method to the notice of requirements for phthalates testing. Parties who believe that our accreditation criteria should be expanded to include a specific test method should contact us; or, alternatively, they should use the petition process at 16 CFR part 1051, to ask us to amend this rule (assuming that this rule is finalized). The commenter did not indicate a specific test method that we should allow to be used to determine phthalate concentrations. Thus, we cannot determine equivalency to our existing test methods.

With respect to the Canadian test method, we assume that the commenter is referring to *Determination of Phthalates in Polyvinyl Chloride Consumer Products,* Health Canada test method C–34. We share the desire to reduce the testing burden, where possible, through harmonization; and we developed CSPC test method CPSC–CH–C1001–09.3 (and its predecessors), specifically including the Health Canada Method C–34 for determining phthalates, as well as many other methods that were deemed acceptable as optional means of extraction and analysis of the phthalates in samples. Thus, tests by a CPSC-accepted testing laboratory using the C–34 test method are allowed for children's product certification purposes.

(*Comment 40*)—Two commenters sought clarification of what materials need to be tested for phthalates. One commenter referred to our ''Statement of Policy: Testing of Component Parts with Respect to Section 108 of the CPSIA'' (dated August 7, 2009) (''Statement of Policy'') to point out that the Statement of Policy gave examples of materials that do not normally contain phthalates and would not require testing or certification. The commenter then said that the notice of requirements caused confusion because a joint statement by a majority of the Commissioners indicated that the notice of requirements did not expand the universe of materials or products to be tested or certified and that the Statement of Policy remained in effect, yet the notice of requirements did not reflect the Statement of Policy. Thus, the commenter asked us to revise the notice of requirements to ''specifically list all plastic materials that are known not to contain phthalates, including, but not limited to, those identified in the (Statement of Policy) * * * .'' The commenter also provided a list of more than 30 plastic materials that it said are known not to contain phthalates.

The second commenter also referred to the Statement of Policy, but they asked that we revise the Statement of Policy to ''make it clear * * * that the excluded material list compiled, is not exhaustive and similar, related or other such materials may not require testing and may be added in the future.'' The commenter said, however, that ''it is likely impossible to create an exhaustive list of *all* materials that may not include phthalates and therefore may not require testing'' (emphasis in original).

(*Response 40*)—While we recognize the commenters' desire for greater clarification with respect to materials that may or may not contain phthalates, the principal purpose of a notice of requirements is to establish the criteria under which we will accept the accreditation of a third party conformity assessment body. In this instance, the notice of requirements identified the two test methods to which third party conformity assessment bodies should be accredited, and any information describing the materials that normally do not contain phthalates was intended to provide helpful guidance, rather than establish accreditation criteria. We acknowledge that the Statement of Policy discussed materials or products that are not known to contain phthalates and that the notice of requirements referred to the Statement of Policy and other previous CPSC documents; but that portion of the notice of requirements was intended to inform interested parties about those prior CPSC documents and to indicate that they remain in effect.

With respect to expanding the list of materials that may or may not contain phthalates and whether such a list should be part of a notice of requirements, we will consider whether additional guidance on materials containing or not containing phthalates should be developed. We decline, however, to include such a list in a notice of requirements or this rulemaking. Our experience indicates that when a regulation or document attempts to provide a list of examples, often the list is construed to be exhaustive or definitive, resulting in multiple requests to amend the rule or revise the document to add or delete items from the list. Given our scarce resources, and for the reasons mentioned in this response, we do not believe it would be prudent to include as part of this rulemaking, a list of materials containing phthalates or a list of materials known not to contain phthalates.

(*Comment 41*)—One commenter discussed Public Law 112–28 and the exception it created for inaccessible component parts containing phthalates. In brief, section 5 of Public Law 112–28 amended section 108 of the CPSIA to create an exclusion for ''inaccessible component parts.'' The commenter sought clear direction from us about ''how the phthalate standard will apply

to inaccessible components'' and asked that we ''immediately amend the Statement of Policy to clarify that inaccessible components are exempt from the phthalate standard and therefore exempt from third party testing.''

(*Response 41*)—We published the Statement of Policy and the notice of requirements before Public Law 112–28 was enacted. Thus, issues concerning implementation of the phthalates provision in Public Law 112–28 and revisions to the Statement of Policy are outside the scope of the notice of requirements and this rulemaking. Further, the notice of requirements establishes the criteria and process for CPSC acceptance of accreditation of laboratories for testing children's products under section 14 of the CPSA. Determination of which component parts require testing is outside the scope of a notice of requirements.

(*Comment 42*)—One commenter said that because phthalates are added intentionally to some plastics, paints, and other materials and are not ubiquitous environmental contaminants, manufacturers of products ''produced exclusively from materials on the phthalate exclusion list (or other materials not likely to contain phthalates)'' are ''generally able to be certain that they are not intentionally adding phthalates and that phthalate-containing materials are not present in their factories.'' The commenter asked that we ''explicitly recognize such knowledge as a reasonable basis for certifying compliance'' with the phthalates limits and ''allow self-certification by such entities.''

(*Response 42*)—We decline to revise the notice of requirements or draft this rule to incorporate the commenter's suggestion. Section 14(a)(2) of the CPSA is clear that, with respect to children's products, a manufacturer must certify the product based upon testing by a third party conformity assessment body accredited under section 14(a)(3) of the CPSA. Self-certification based upon a manufacturer's knowledge would not be consistent with section 14(a)(2) of the CPSA.

E. Miscellaneous Comments

(*Comment 43*)—One commenter agreed with the notice of requirements for 16 CFR part 1505, *Requirements for Electrically Operated Toys or other Electrically Operated Articles Intended for Use by Children,* and 16 CFR 1500.86(a)(5) (Clacker Balls) and suggested that officials be sent to manufacturer sites (domestic and foreign) to conduct audits to see that the tests are performed properly and to ensure that the manufacturers do perform all steps of the tests submitted by them to the accredited agencies.

(*Response 43*)—The commenter may have misunderstood the notice of requirements. The tests to assess compliance are performed at laboratories, not at manufacturing sites (unless a manufacturing site has a firewalled laboratory). If the commenter is referring to firewalled laboratories or third party laboratories, in general, we have designated accreditation bodies that are signatories to the ILAC–MRA to conduct accreditation of third party conformity assessment bodies to be accepted by the Commission. ILAC–MRA signatories visit independent and firewalled laboratories during initial assessments and regular reassessments to assess the laboratory's continued compliance to the requirements of ISO/IEC 17025:2005. In every assessment and reassessment, the accreditation body must demonstrate that it has adequately assessed all of the laboratory's technical competencies and management systems competencies (as prescribed in ISO/IEC 17025:2005) associated with its scope of testing.

(*Comment 44*)—Most notices of requirements included provisions allowing certificates of compliance to be based on testing performed by an accredited third party conformity assessment body before the Commission accepts the laboratory's accreditation. This practice is sometimes referred to as allowing ''retrospective'' testing. In the notices of requirements, we prescribed particular circumstances under which retrospective testing could support a Children's Product Certificate. For example, we stated that the product should be tested by a third party conformity assessment body that was, at the time of product testing, ISO/IEC 17025:2005 accredited by an ILAC–MRA signatory accreditation body; the accreditation scope in effect at the time of testing had to include testing to the regulation or test method identified in the notice; and we placed constraints on how far back in time the retrospective testing could occur. Initially, we did not allow any retrospective testing by firewalled laboratories. Later, we allowed retrospective testing by firewalled laboratories, if the firewalled laboratory had already been accepted by an order of the Commission for testing to a test method or regulation specified in an earlier notice of requirements.

A commenter, in response to an earlier notice of requirements, supported the position of not allowing any retrospective testing by firewalled laboratories. This commenter viewed the position of not allowing any retrospective testing by firewalled laboratories as a way to reduce any possible conflicts of interest and to ensure that no undue influence occurred in the certification process.

(*Response 44*)—If we have already accepted a laboratory as firewalled, we consider the laboratory to have shown previously that it has policies and procedures in place consistent with laboratory independence and impartiality. We will monitor this policy, and, if necessary, revise it in future rulemakings. We note that because retrospective testing issues arise only when a third party testing requirement for a particular rule or standard begins, this proposed rule would not address retrospective testing.

(*Comment 45*)—Some commenters argued that the CPSA, as amended by the CPSIA, does not require third party testing of children's products that are subject to a regulation of general applicability (*e.g.,* 16 CFR 1610, *Standard For the Flammability of Clothing Textiles*). In the view of these commenters, the only children's products for which third party testing is required are those children's products subject to a regulation whose reach is limited to children's products (*e.g.,* 16 CFR 1615, 1616, *Standard for the Flammability of Children's Sleepwear*). One commenter stated that the safety of children's products subject to rules of general applicability can be assured via the General Comformity Certificates that are required for non-children's products under section 14(a)(1) of the amended CPSA.

Some of the commenters who disagreed that the amended CPSA requires third party testing of children's products subject to rules of general applicability asserted that, even if the Commission views the text of the statute as requiring third party testing for such products, we should, nevertheless, use our implementing authority under section 3 of the CPSIA to limit the third party testing requirement to rules of limited applicability—that is, rules applicable solely to children's products. Similarly, one commenter urged the Commission to use authority granted in section 14(b) of the CPSA to ''assess the necessity of third party testing on a case-by-case basis.''

One commenter argued that we have been inconsistent in describing what constitutes a ''children's product safety rule.'' The commenter noted that in the proposed rule on ''Testing and Labeling Pertaining to Product Certification,'' we stated: ''[c]urrently, the rule on children's bicycle helmets is the only children's product safety rule that contains requirements for a reasonable

testing program.'' 75 FR 28336, 28348 (May 20, 2010). Because the FFA regulations, such as 16 CFR part 1610, *Standard for the Flammability of Clothing Textiles,* contain reasonable testing programs, the commenter asserted that we must not consider FFA regulations to be children's product safety rules. The commenter argued that we should offer the reasonable testing program requirements in 16 CFR part 1610 the same treatment we have afforded all children's product safety rules with existing reasonable testing programs (*e.g.,* bicycle helmets).

(*Response 45*)—Section 14(a)(2) of the CPSA requires manufacturers and private labelers of a children's product subject to a children's product safety rule to certify that their children's product complies with the relevant children's product safety rule. Section 14(f)(1) of the CPSA defines ''children's product safety rule'' as ''a consumer product safety rule under this Act or similar rule, regulation, standard, or ban under any other Act enforced by the Commission, including a rule declaring a consumer product to be a banned hazardous product or substance.'' 15 U.S.C. 2063(f)(1).

Thus, the statute defines a ''children's product safety rule'' to mean a consumer product safety rule. The Commission has taken the position that the statute requires third party testing to support a certification of a children's product if that children's product is subject to a consumer product safety rule. A ''consumer product safety rule'' becomes a ''children's product safety rule''—not when the product subject to the rule is limited to children's products—but rather, when the product subject to the rule includes children's products.

With regard to the comment that a General Conformity Certificate would adequately assure the safety of children's products, we again refer to the statute. Section 14(a)(2) of the CPSA states that a certification based on third party testing is required for ''any children's product that is subject to a children's product safety rule.'' General Conformity Certificates are required for non-children's products and are not required to be based on third party testing. However, Public Law 112–28 allows small batch manufacturers to use alternative testing requirements once the Commission has identified such testing requirements, or they are allowed an exemption if the Commission determines that no alternative testing requirement is available or economically practicable.

As for the comment regarding section 3 of the CPSIA, the statute gives us some latitude in implementing the CPSIA, but it does not authorize us to avoid implementing the statute altogether. Courts have held that an agency's authority to implement a new statute does not encompass avoiding the statutory obligation itself. *See U.S.* v. *Markgraf,* 736 F.2d 1179, 1183 (7th Cir. 1984) (''An administrative agency cannot abdicate its responsibility to implement statutory standards under the guise of determining that inaction is the best method of implementation.''). *See also Friends of the Earth, Inc.* v. *EPA,* 446 F.3d 140, 145 (DC Cir. 2006) (An administrative agency may not avoid the plain language of a statute by asserting that its preferred approach would be better policy; nor can a court ''set aside a statute's plain language simply because the agency thinks it leads to undesirable consequences in some applications.'')

Finally, the comment regarding inconsistency in determining what is a children's product safety rule was submitted in response to the notice of requirements for clothing textiles, which was published on August 18, 2010—several months after publication of the proposed rule on ''Testing and Labeling Pertaining to Product Certification.'' The publication of the clothing textiles notice of requirements clearly indicates that the Commission decided that the clothing textiles standard is a children's product safety rule. In fact, the Commission reaffirmed its position when it revised the clothing textiles notice of requirements on April 22, 2011. *See* 76 FR 22608. The Commission also issued other FFA-related notices of requirements subsequent to the publication of the proposed rule on ''Testing and Labeling Pertaining to Product Certification.'' *See, e.g.,* 75 FR 42311 (July 21, 2011). Accordingly, we consider the quoted sentence in the preamble to the proposed rule on ''Testing and Labeling Pertaining to Product Certification'' to be in error because, as shown by subsequent CPSC actions, FFA regulations may be children's product safety rules and the subject of a notice of requirements.

(*Comment 46*)—Some commenters expressed concern over the cost of third party testing. One commenter noted, in particular, that for regulations under the Flammable Fabrics Act (FFA), 15 U.S.C. 1191–1204, the tests involve hazards, which could result in ''required testing of additional samples, longer lead times for testing, and added expenses.'' Some commenters urged a thorough cost-benefit analysis of the CPSC's rules related to testing and certification, component parts, and/or the notices of requirements. Some of these commenters argued that the additional cost of third party testing carries no benefit because third party testing does not enhance product safety.

Another commenter stated that ''[r]equiring third party testing further triggers compliance'' with requirements under the two recent notices of proposed rulemaking (NPRs), *Testing and Labeling Pertaining to Product Certification* (to be codified at 16 CFR 1107) (75 FR 28336 (May 20, 2010) and *Conditions and Requirements for Testing Component Parts of Consumer Products* (to be codified at 16 CFR 1109) (75 FR 28208 (May 20, 2010)). The commenter opined that ''these regulatory burdens dilute the focus from * * * ensuring that the product is safe and compliant with regulatory standards.''

(*Response 46*)—We are sensitive to testing cost concerns and note that Public Law 112–28 expressly required us to seek public comment on opportunities to reduce the cost of third party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulation and listed seven issues for public comment. In the **Federal Register** of November 8, 2011 (76 FR 65956), we invited comment on the seven issues and on opportunities to reduce the cost of third party testing requirements. The comment period for the notice ended on January 23, 2012, and we will address the comments in a separate proceeding.

However, with respect to conducting cost-benefit analyses for the rules identified in the comment, the CPSIA did not require us to conduct such analyses. We also note that we issued final rules on ''Testing and Labeling Pertaining to Product Certification'' (76 FR 69482 (November 8, 2011)) and ''Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party's Finished Product Testing or Certification, to Meet Testing and Certification Requirements'' (76 FR 69546 (November 8, 2011)). The preamble to the final rule on ''Testing and Labeling Pertaining to Product Certification'' summarized and responded to a similar comment on cost-benefit analyses (*see* 76 FR at 69484 (comment 2 and response)).

Yet, with respect to the comment that a notice of requirements somehow ''triggers compliance'' with these two rules, we disagree. A notice of requirements establishes the criteria under which we will accept the accreditation of a third party conformity assessment body to test children's

products for compliance to a children's product safety rule. Section 14(a)(3)(A) of the CPSA states that the third party testing requirement applies to any children's product manufactured more than 90 days after we have established and published the notice of requirements. Section 14(i)(2) of the CPSA creates the obligation for continuing testing. In any event, the final rule on ''Testing and Labeling Pertaining to Product Certification'' does not become effective until February 8, 2013. The final rule on ''Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party's Finished Product Testing or Certification, to Meet Testing and Certification Requirements,'' while effective on December 8, 2011, pertained to the conditions and requirements under which passing component part test reports, certification of component parts of consumer products, or finished product testing or certification procured or issued by another party, can be used to meet, in whole or in part, the testing and certification requirements of sections 14(a) and 14(i) of the CPSA. As such, component part testing as described by that final rule is voluntary, rather than mandatory.

(*Comment 47*)—One commenter asserted that requiring manufacturers of children's clothing textiles subject to the FFA regulations at 16 CFR part 1610, *Standard for the Flammability of Clothing Textiles,* to issue certifications based on third party testing ''bypasses the entire FFA rulemaking process.'' The commenter argued that section 4(b) of the FFA requires that regulations or amendments to regulations be based on certain findings that the CPSC has not made, and argued that we have effectively amended part 1610 to require third party testing of children's clothing textiles. The commenter stated that when the test methods in part 1610 were promulgated, and ''[i]n accordance with Section 4(b) of the FFA,'' the CPSC hosted several meetings attended by industry and testing representatives, who worked cooperatively to develop test methods that the representatives and CPSC agreed were appropriate to assess compliance with the flammability standards. The commenter stated that the third party testing requirements, along with the requirements proposed in the testing and labeling and component parts NPRs, ''entirely undermine this cooperative effort.''

This commenter also asserted that the testing requirements in part 1610 are sufficient for children's products subject to those regulations, and that requiring third party testing does not provide additional assurance of the product's ability to pass the applicable product safety standard. The commenter asked the Commission to hold a public meeting if we do not agree that the testing regime under part 1610 is sufficient for the industry to demonstrate compliance with the standard.

(*Response 47*)—The purpose of the *Standard for the Flammability of Clothing Textiles* is to keep dangerously flammable textiles and garments made of these textiles out of commerce. The standard provides methods of testing the flammability of clothing and textiles intended to be used for clothing by classifying fabrics into three classes of flammability based on their speed of burning. The CPSC has not amended 16 CFR part 1610 by implementing the third party testing requirements of section 14 of the CPSA.

Section 4 of the FFA prescribes the process for promulgating a regulation under that statute. Section 4(b) of the FFA requires, in relevant part, that each FFA ''standard, regulation, or amendment thereto * * * be based on findings that such standard, regulation, or amendment thereto is needed to adequately protect the public against unreasonable risk of the occurrence of fire leading to death, injury, or significant property damage, is reasonable, technologically practicable, and appropriate.'' 15 U.S.C. 1193(b). Section 4(b) of the FFA does not mandate consultation with industry. It requires findings in support of an FFA regulation. The fact that industry representatives cooperated with the CPSC when part 1610 was promulgated does not mean that the CPSC, in implementing section 14(a)(3)(B)(vi) of the CPSA, must host meetings before issuing a notice of requirements. Therefore, we decline the commenter's suggestion to hold a public meeting on this matter.

With regard to the commenter's assertion that tests conducted under part 1610 sufficiently assure compliance with the standard, and therefore, third party testing is not necessary, we note that, absent the CPSIA, a manufacturer of a clothing textile was not required to conduct the test prescribed by part 1610 at all. If the manufacturer wished to issue an FFA guaranty that the product complied with part 1610, then the manufacturer had to conduct the tests prescribed by part 1610, but that testing was entirely optional.

(*Comment 48*)—One commenter stated that the Commission should have allowed 60 days for the comments to be submitted in response to the notices of requirements, noting that the TBT Committee has recommended 60-day comment periods. This commenter also observed that the notice of requirements was effective on publication; thus, there was no opportunity to comment prior to the notice taking effect.

(*Response 48*)—The notices of requirements that invited public comments have all contained a 30-day comment period and have all been effective upon publication. Nevertheless, this proposed rule provides a 75-day comment period. The public may comment on all aspects of the proposal, even those parts that were previously included in the notices of requirements.

F. Comments Considered Out of Scope

Several commenters raised issues that were not present in the notices of requirements and are not directly relevant to this proposed rule; such issues, therefore, are outside the scope of this rulemaking.

(*Comment 49*)—One commenter recommended that we address the procedures for filing certificates of compliance, including who ''owns'' the certificate and what is the required retention period for certificates.

(*Response 49*)—This issue is outside the scope of this rulemaking because neither the notices of requirements, nor this proposed rule, concern the requirements or processes for certificates of compliance. We note that the recently issued final rule, *Testing and Labeling Pertaining to Product Certification* (76 FR 69482 (November 8, 2011) (to be codified at 16 CFR part 1107)), addresses the length of time manufacturers are required to keep records of certificates of compliance.

(*Comment 50*)—One commenter suggested that we specify what will be considered ''sufficient samples'' of a children's product to submit for third party testing. The commenter was concerned that different laboratories would require different sampling schedules, and they suggested that manufacturers might choose to use laboratories that require the least onerous sampling schedule. The commenter recommended that we prescribe a specific, testing schedule based on a statistical scheme for sample product runs of the children's products. The commenter also suggested that the number of samples selected for testing should be based on the size and duration of the production run of the children's product.

(*Response 50*)—The proposed rule is limited to establishing the requirements for conformity assessment bodies in order for their test results to be used for

children's product certification purposes. The certifier, not the laboratory, determines what constitutes a sufficient number of samples to test for certification. The recently issued final rule on *Testing and Labeling Pertaining to Product Certification* (76 FR 69482 (November 8, 2011) (to be codified at 16 CFR part 1107)), addresses sample size issues to a certain extent, and we also issued a proposed rule pertaining to ''representative samples'' (76 FR 69586 (November 8, 2011)), pursuant to Public Law 112–28.

(*Comment 51*)—One commenter stated: ''component or raw material testing is another major concern,'' and they urged that ''allowing for reasonable component testing is a critical need to avoid a crushing financial burden on small businesses.''

(*Response 51*)—This rulemaking is limited to the requirements related to the accreditation of third party conformity assessment bodies. Whether and under what circumstances component parts of children's products may be third party tested separately in support a certificate of compliance is not related to the criteria and process for CPSC acceptance of the accreditation of third party conformity assessment bodies. The recently issued final rule, *Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party's Finished Product Testing or Certification, to Meet Testing and Certification Requirements* (76 FR 69546 (November 8, 2011) (to be codified at 16 CFR part 1109)), should address the commenter's concerns.

(*Comment 52*)—Some commenters described their opinions concerning whether third party testing of children's products for lead content should be required. Overall, the commenters supported third party testing in this context.

(*Response 52*)—Section 101 of the CPSIA established the lead content limits for children's products. Section 14(a)(2)(A) of the CPSA requires manufacturers of children's products to submit samples of a children's product to a third party conformity assessment body for testing as a basis for certifying the children's product. These comments refer to the statutory requirements and are beyond the scope of this proposed rulemaking.

(*Comment 53*)—In response to the notice of requirements for accreditation of third party conformity assessment bodies to assess conformity of youth products under the CPSC regulation on ATVs (16 CFR part 1420), one commenter urged that children younger than the age at which one can legally drive traditional motor vehicles should not be allowed to operate ATVs. In the view of this commenter, ATVs have become a serious public health concern for children. The commenter described study findings and statistics in support of his view.

(*Response 53*)—The notice of requirements related to ATVs provided the criteria and processes for CPSC acceptance of the accreditation of laboratories that will be able to conduct the third party tests of youth ATVs that may support manufacturers' certificates of compliance with 16 CFR part 1420. Therefore, the question of whether children should be allowed to operate ATVs is beyond the scope of the ATV notice of requirements and the proposed rule.

(*Comment 54*)—Several commenters remarked on the cost of complying with the lead content requirements in the context of small businesses selling handcrafted items. One commenter remarked that handcrafted, one-of-a-kind items cannot each be destructively tested. The commenter suggested that our regulations mirror California's Lead-Containing Jewelry Law, AB 2901. Another commenter asked if the regulations had exceptions to the testing requirements. Another commenter stated that the testing costs will tend to decrease consumer options because small manufacturers will not be able to stay in business. The commenter's main concern was that all ''units'' of children's items must be tested for lead content and phthalates, and that relying on testing by suppliers is not sufficient. The commenter offered the following suggestions:

1. Waive the testing requirements for small-volume manufacturers, such as those with less than $1 million in revenue in the United States.

2. If a waiver is not possible, provide free testing to small businesses that produce children's products.

3. Allow third party certification of components from manufacturers to be used as a basis for a finished product certificate.

(*Response 54*)—The scope of this proposed rule is limited to the requirements related to the accreditation of third party conformity assessment bodies. This rulemaking does not address the requirements related to the testing and certification of consumer products. Therefore, these comments are beyond the scope of this proposed rule.

Additionally, one provision in Public Law 112–28 directs us to seek public comment on seven specific issues, including:

- The extent to which modification of the certification requirements may have the effect of reducing redundant third party testing by or on behalf of two or more importers of a product that is substantially similar or identical in all material respects;
- The extent to which products with a substantial number of different components subject to third party testing may be evaluated to show compliance with an applicable rule, ban, standard, or regulation by third party testing of a subset of such components selected by a third party conformity assessment body;
- The extent to which manufacturers with a substantial number of substantially similar products subject to third party testing may reasonably make use of sampling procedures that reduce the overall test burden without compromising the benefits of third party testing; and
- Other techniques for lowering the cost of third party testing consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations.

Recently, we published a **Federal Register** notice seeking public comment on issues regarding reducing the testing burden for children's product certifiers. *See Application of Third Party Testing Requirements; Reducing Third Party Testing Burdens* (76 FR 69596 (November 8, 2011)). Public Law 112–28 also requires us to review the public comments, and it states that we may prescribe new or revised third party testing regulations if we determine that such regulations will reduce third party testing costs consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations.

(*Comment 55*)—One commenter raised concerns that the third party testing requirements would create a competitive advantage for the larger firms and drive many small businesses out of the market. The commenter recommended that the law (presumably the CPSIA) be amended to focus on manufacturers directly linked to the production of unsafe products for children and penalize them, as opposed to penalizing the small business community.

(*Response 55*)—The commenter may have misunderstood the purpose of a notice of requirements. A notice of requirements establishes the accreditation requirements for laboratories to test for compliance to specific rules, bans, standards, or regulations. It does not establish requirements for manufacturers, other than establishing a date by which children's products must be certified based on third party testing results. Therefore, issues pertaining to statutory amendments, the effects of third party testing on small businesses, and penalties for manufacturers, are all beyond the scope of this proposed rule.

As discussed in the response to Comment 49, we have published a notice in the **Federal Register** (76 FR 69596) seeking public comment on issues regarding reducing the testing burden for children's product certifiers. Further, Public Law 112–28 created a new section 14(i)(4) of the CPSA to provide for special rules for small batch manufacturers. The provision contemplates the possible development of alternative testing requirements for ''covered products'' made by ''small batch manufacturers'' and defines the terms ''covered product'' and ''small batch manufacturer.'' The provision also provides for possible exemptions of small batch manufacturers from the third party testing requirements and imposes certain limits on third party testing requirements.

IV. Description of the Proposed Rule

The proposed rule would consist of four subparts. Subpart A, ''Purpose and Definitions,'' is created by the audit final rule published elsewhere in this issue of the **Federal Register**. This proposed rule would add to subpart A, a section describing the purpose of part 1112; it would amend two definitions contained in the audit final rule; and it would add several new definitions. In addition, the audit final rule reserved a subpart B in part 1112; this proposed rule would create subpart B, which would contain the principal requirements for third party conformity assessment bodies, including how a laboratory may obtain CPSC acceptance of its accreditation. Subpart C addresses audits, and it is the core of the audit final rule (published elsewhere in this issue of the **Federal Register**). The proposed rule, however, would add a provision to subpart C, addressing the timing of audits. The proposed rule also would create a subpart D, addressing adverse actions that we may take against CPSC-accepted third party conformity assessment bodies. Finally, the proposed rule would make limited changes to § 1118.2, the Commission's regulation on the conduct and scope of inspections, to conform with part 1112.

At the outset, we note that section 14(f)(2)(D) of the CPSA requires that the acceptance of the accreditation of a firewalled laboratory occur by order of the Commission. Consistent with this provision, the Commission considers that any removal of the acceptance of the accreditation of a firewalled laboratory (whether by suspension or withdrawal) also must occur by order of the Commission. The Commission may delegate other functions and powers described in this part to CPSC staff, under 16 CFR § 1000.11. (Due to this distinction between functions that the Commission as a body of appointed Commissioners must discharge, and other functions that the agency may discharge via staff activity, from this point forward in this preamble, we attempt to distinguish between the Commission as a body (''Commission'') and the CPSC as an agency (''CPSC'').)

A. Subpart A—Purpose and Definitions

1. Proposed § 1112.1—Purpose

Proposed § 1112.1 would describe the major topics addressed in part 1112. It would note that the part defines the term ''third party conformity assessment body'' and describes the types of third party conformity assessment bodies whose accreditations are accepted by the CPSC to test children's products under section 14 of the CPSA. It would note that part 1112 describes the requirements and procedures for becoming a CPSC-accepted third party conformity assessment body; the audit requirement applicable to third party conformity assessment bodies; how a third party conformity assessment body may voluntarily discontinue participation as a CPSC-accepted third party conformity assessment body; the grounds and procedures for withdrawal or suspension of CPSC acceptance of accreditation of a third party conformity assessment body; and how an individual may submit information alleging grounds for adverse action.

2. Proposed § 1112.3—Definitions

The proposed rule would add a sentence preceding the definitions, to clarify that the definitions in this section apply for purposes of this part.

(i) Revised Definitions

Proposed § 1112.3 would amend two definitions that appear in the audit final rule, which published elsewhere in this issue of the **Federal Register**. The two definitions to be amended are:

Audit: An audit of a CPSC-accepted laboratory consists of two parts: the reassessment portion, which is conducted by the accreditation body, and the examination portion, which is conducted by the CPSC. Currently, the definition of audit describes the examination portion as:

> The resubmission of the ''Consumer Product Conformity Assessment Body Acceptance Registration Form'' (CPSC Form 223) by the third party conformity assessment body and the Consumer Product Safety Commission's (''CPSC's'') examination of the resubmitted CPSC Form 223. If the third party conformity assessment body is owned, managed, or controlled by a manufacturer or private labeler (also known as a ''firewalled'' conformity assessment body) or is a government-owned or government-controlled conformity assessment body, the CPSC's examination may include verification to ensure that the entity continues to meet the appropriate statutory criteria pertaining to such conformity assessment bodies.

To this portion of the definition, the proposed rule would add the words, ''and accompanying documentation'' twice, after each mention of the CPSC Form 223. The proposed rule would delete the second sentence and replace it with the following two sentences:

> Accompanying documentation includes the baseline documents required of all applicants in § 1112.13(a), the documents required of firewalled applicants in § 1112.13(b)(2), and/or the documents required of governmental applicants in § 1112.13(c)(2).

Documents beyond the baseline documents are required of firewalled and governmental applicants so that the CPSC's examination may include verification to ensure that the entity continues to meet the appropriate statutory criteria pertaining to such third party conformity assessment bodies. These changes would clarify which materials must be submitted at audit. As the purpose of the audit is to confirm that the laboratory continues to meet the requirements of CPSC acceptance, all laboratories would be required to submit the baseline documentation.

CPSC: The audit final rule defines ''CPSC'' to mean the U.S. Consumer Product Safety Commission. The proposed rule would discuss certain tasks that must be accomplished by the actual Commission body, as opposed to the CPSC as an agency. Thus, to distinguish between the Commission, as a body, as opposed to the agency, as a whole, the proposed rule, for purposes of part 1112 only, would revise the definition of ''CPSC'' to mean the U.S. Consumer Product Safety Commission as an agency.

(ii) New Definitions

Proposed § 1112.3 would create the following nine definitions:

Accept accreditation: The proposed rule would define this term consistent with its use in section 14 of the CPSA. *See, e.g.,* 15 U.S.C. 2063(e)(1). It would mean that the CPSC has positively disposed of an application by a third party conformity assessment body to test children's products pursuant to a particular children's product safety rule, for purposes of the testing required in section 14 of the CPSA.

Commission: We would define ''Commission'' to mean the body of Commissioners appointed to the U.S.

Consumer Product Safety Commission. In contrast, the agency as a whole will be referred to, in this part, as the CPSC.

CPSA: We would define this acronym to mean the Consumer Product Safety Act, 15 U.S.C. 2051–2089.

Notice of requirements: We would define this term consistent with how it is used in section 14 of the CPSA and with how we have used the term to date. It would mean a publication that provides the minimum qualifications necessary for a laboratory to become CPSC-accepted to test children's products pursuant to a particular children's product safety rule.

Scope: The testing and accreditation community typically use the word ''scope'' or ''scope of accreditation'' to mean the entire list of testing services for which a laboratory has been granted accreditation, which usually includes many test methods and standards beyond those related to CPSC rules. For purposes of this part, we would define this term slightly differently. In part 1112, ''scope'' would mean the range of particular children's product safety rules and/or test methods to which a laboratory has been accredited and for which it may apply for CPSC acceptance of its accreditation.

Suspend: The proposed rule would define this term consistent with its use in section 14(e) of the CPSA, which this proposed rule would implement. ''Suspend'' would mean that the CPSC has removed its acceptance, for purposes of the testing of children's products required in section 14 of the CPSA, of a laboratory's accreditation due to the laboratory's failure to cooperate in an investigation under this part.

Third party conformity assessment body: We propose to define this term to mean a testing laboratory.

We developed this definition from the use of the term ''third party conformity assessment body'' in section 14 of the CPSA. The CPSA contains a lengthy definition of this term, which includes the conditions placed on governmental and firewalled laboratories. For ease of understanding, we propose to define the term more succinctly, but our definition is consistent with the term's use throughout the CPSA.

In particular, we note that the statutory definition of this term states that a governmental laboratory that satisfies certain conditions may be considered a third party conformity assessment body. The statutory definition also states that a conformity assessment body that is owned, managed, or controlled by a manufacturer or private labeler may be accepted as a third party conformity assessment body by the Commission if it satisfies certain conditions. Section 14 of the CPSA consistently refers to CPSC-accepted laboratories collectively as ''third party conformity assessment bodies.''

We are aware that the term ''third party conformity assessment body,'' by virtue of the words ''third party,'' commonly refers to a laboratory that is entirely independent of the entity supplying the product to be tested and independent of any entity interested in the product. However, because this rule implements section 14 of the CPSA, which refers to all CPSC-accepted laboratories as ''third party conformity assessment bodies,'' the proposed rule would follow the statute's convention on this point.

We also are aware that, in the laboratory industry, the term ''third party conformity assessment body'' is understood to include entities other than testing laboratories. However, the proposed rule would use the term as it is used in the CPSA, which is as a testing laboratory.

Finally, we note that, in the preamble to this rule, for ease of reference, and for the convenience of the reader, we use the word ''laboratory'' interchangeably with ''third party conformity assessment body.'' In the regulatory text, for clarity, we only use the full term, ''third party conformity assessment body.''

Undue influence: We have developed a definition for undue influence after reviewing similar definitions used by other federal agencies and some laboratories, and with the goal of having a broad enough definition that the myriad sources and methods of undue influence that could arise in this context would be captured by the definition. The proposed rule would define ''undue influence'' to mean that a manufacturer, private labeler, governmental entity, or other interested party affects a laboratory, such that commercial, financial, and other pressures compromise the integrity of its testing processes or results.

Withdraw: The proposed rule would define this term consistent with its use in section 14(e) of the CPSA. The proposal would define ''withdraw'' to mean that the CPSC removes its prior acceptance of a laboratory's accreditation pursuant to a particular children's product safety rule for purposes of the testing of children's products required in section 14 of the CPSA.

B. Subpart B—General Requirements Pertaining to Third Party Conformity Assessment Bodies

Proposed subpart B would establish the foundation for the CPSC third party conformity assessment body program with respect to basic topics, such as when and how a laboratory may apply to the CPSC for acceptance of its accreditation, and how a laboratory can voluntarily discontinue its participation with the CPSC. The proposed subpart also would define the three types of laboratories, create various obligations for CPSC-accepted laboratories, such as recordkeeping responsibilities, and institute certain limitations, such as limits on the ability to subcontract test work conducted, on CPSC-accepted laboratories. Proposed subpart B also would include details on how we will respond to each application and how we will publish information concerning which laboratories have had their accreditation accepted.

1. Proposed § 1112.11—What are the types of third party conformity assessment bodies?

Proposed § 1112.11 would describe, for purposes of part 1112, the three types of third party conformity assessment bodies: Independent, firewalled, and governmental. Proposed § 1112.11(a) would describe an ''independent laboratory'' as a third party conformity assessment body that is neither owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the laboratory, nor owned or controlled, in whole or in part, by a government.

Section 14(f)(2) of the CPSA defines a ''firewalled third party conformity assessment body'' as one that is owned, managed, or controlled by a manufacturer or private labeler. We note that section 14(f)(2)(D) of the CPSA clearly states that a firewalled laboratory is one ''owned, managed, or controlled *by* a manufacturer or private labeler (emphasis added).'' Therefore, we do not consider a laboratory to be firewalled if the laboratory owns, manages, or controls a manufacturer or private labeler.

We note that, for purposes of determining whether a laboratory is considered firewalled, we propose to interpret ''manufacturer'' to include a trade association. Like a manufacturer, an association of manufacturers is in a position to exert undue influence on a laboratory owned, managed, or controlled by the association. The undue influence may come in the form of an expectation that special

consideration will be given to the test results of association members or reports of attempted undue influence by an association member are discouraged.

The proposed rule would consider a laboratory ''firewalled'' if: it is owned, managed, or controlled by a manufacturer or private labeler of a children's product; that children's product is subject to a CPSC children's product safety rule which the laboratory requests CPSC acceptance to test; and the laboratory intends to test such children's product made by the owning, managing, or controlling entity for the purpose of supporting a Children's Product Certificate. A laboratory would be considered to be ''owned, managed, or controlled'' by a manufacturer or private labeler if one (or more) of four characteristics apply.

The first circumstance that would result in a laboratory being characterized as firewalled is closely related to the method we have been using in the notices of requirements to identify firewalled laboratories. Under proposed § 1112.11(b)(1)(ii)(A), if the manufacturer or private labeler of the children's product holds a 10 percent or greater ownership interest, whether direct or indirect, in the laboratory, the laboratory would be considered firewalled. In this context, indirect ownership interest would be calculated by successive multiplication of the ownership percentages for each link in the ownership chain.

We propose to maintain the 10 percent threshold ownership amount because it is our estimation that a manufacturer or private labeler that possesses a less than 10 percent ownership interest in a laboratory, and that does not otherwise exercise management or control of the laboratory, presents a low risk of exercising undue influence over the laboratory. In addition, our experience using this threshold over the past three years indicates that applicants easily understand it and have been able to supply such information. We note that the Federal Communications Commission also uses a 10 percent ownership threshold in its ownership disclosure requirements for applications. *See* 47 CFR 1.2112.

The difference in the proposed rule from current practice is the addition of indirect ownership. Proposed § 1112.11(b)(1)(ii)(A) would include indirect ownership because an entity that owns a manufacturer or private labeler which, in turn, owns a laboratory, has the same potential for conflict of interest concerning the independence of the testing process as a manufacturer or private labeler who owns a laboratory directly. We propose to determine whether an indirect owner holds a 10 percent interest in a laboratory by multiplying the percentages of ownership in each owning entity. For example, if Company X is a manufacturer of a children's product and owns 25 percent of the stock in Company Y, and Company Y owns 50 percent of Laboratory Z, then Company X would own (indirectly) 12.5 percent of Laboratory Z ($0.25 \times 0.50 = 0.125$). Because Company X holds more than a 10 percent indirect ownership interest in Laboratory Z, if Laboratory Z wishes to apply to the CPSC for acceptance of its accreditation to test children's products made by Company X, Laboratory Z would be considered an applicant for firewalled status. This approach to calculating indirect ownership is used by some other Federal agencies. *See, e.g.,* 42 CFR 420.202 (Medicare regulations concerning ownership or control disclosure requirements); 47 CFR 1.2112 (FCC regulations concerning ownership disclosure requirements).

The second circumstance, in proposed § 1112.11(b)(1)(ii)(B), that would signify a firewalled laboratory is when the laboratory and a manufacturer or private labeler of the children's product are owned by the same parent entity. In this instance, the manufacturer would not be a 10 percent owner of the laboratory, either directly or indirectly; but the interests of both entities would converge in a common parent. In such a case, the parent company would hold the interests of the manufacturer, and the laboratory should be properly firewalled to ensure its testing processes are independent.

The third circumstance, in proposed § 1112.11(b)(1)(ii)(C), which would result in firewalled status is when a manufacturer or private labeler of the children's product has the ability to appoint a majority of the laboratory's senior internal governing body (including, but not limited to, a board of directors); the ability to appoint the presiding official (including, but not limited to, the chair or president) of the laboratory's senior internal governing body; and/or the ability to hire, dismiss, or set the compensation level for laboratory personnel. The ability to appoint the president or a majority of the senior internal governing body, or to make personnel decisions, indicates management and/or control of the laboratory.

The fourth circumstance, at proposed § 1112.11(b)(1)(ii)(D), that would result in firewalled status is when the laboratory is under a contract to a manufacturer or private labeler of the children's product and the contract explicitly limits the services the laboratory may perform for other customers and/or explicitly limits which or how many other entities may also be customers of the laboratory. In this instance, the terms of the contract would grant the manufacturer or private labeler such a significant interest in the work of the laboratory that the Commission would consider that interest to be controlling.

To date, the list of CPSC-accepted laboratories maintained on the CPSC Web site has not indicated which laboratories have firewalled status. Because this proposed rule would expand the definition of ''firewalled laboratory'' to include laboratories not only owned, but also those managed or controlled by a manufacturer or private labeler, we invite comments on whether the Web site listing should include an indication of firewalled status. Do manufacturers looking for a laboratory via the CPSC Web site want to know whether a laboratory is firewalled? Are there other interests in identifying a laboratory as firewalled on our Web site? Do laboratories with firewalled status perceive disadvantages to being identified as such?

According to section 14(f)(2)(B) of the CPSA, a ''governmental'' laboratory is one ''owned or controlled in whole or in part by a government.'' Proposed § 1112.11(c) would implement that definition. For purposes of this part, we would consider ''government'' to include any unit of a national, territorial, provincial, regional, state, tribal, or local government. ''Government'' would include domestic, as well as foreign governmental entities.

Proposed § 1112.11(c) would consist of six characteristics, any one of which triggers governmental laboratory status. The legal framework for government ownership or control of a laboratory will vary across the world's jurisdictions, as will the potential for undue influence as a direct or indirect result of that government's ownership or control. The government of the laboratory in question may exercise control, based on the rule of law or otherwise, out of proportion to its ownership stake in a laboratory or to the laboratory's official independent status within the government organizational structure—a situation that Congress foresaw when it specified ''in whole or in part'' in section 14(f)(2)(B) of the CPSA. For that reason, the proposed rule would describe those ways that a government could reasonably be seen to have a means of operational control over a laboratory that has a financial or

organizational connection to that government.

The first characteristic that would indicate governmental status is that a governmental entity holds a 1 percent or greater ownership interest, whether direct or indirect, in the laboratory. Selecting 1 percent as an ownership threshold is a practical matter of selecting the smallest whole number as an expression of ownership ''in part.'' Indirect ownership interest would be calculated for these purposes in the same way as we propose to calculate it for purposes of indirect ownership of a firewalled laboratory, which is by successive multiplication of the ownership percentages for each link in the ownership chain. For example, if Government A is a joint venture partner with Company B, such that Government A owns 20 percent of Company B, and Company B holds a 10 percent interest in Laboratory C, then Government A would indirectly own 2 percent of Laboratory C. Therefore, Laboratory C is considered a governmental laboratory.

The second characteristic that would indicate governmental status is that a governmental entity provides any direct financial investment or funding (other than fee for work) to the laboratory. We consider that this circumstance would trigger governmental status because operational control of an enterprise may be affected by control or influence over its resources.

The third proposed governmental characteristic would mirror the third characteristic of firewalled status: a governmental entity has the ability to appoint a majority of the laboratory's senior internal governing body (such as but not limited to a board of directors); the ability to appoint the presiding official of the laboratory's senior internal governing body (such as but not limited to chair or president); and/or the ability to hire, dismiss, or set the compensation level for laboratory personnel. The ability to appoint the president or a majority of the senior internal governing body, or to make personnel decisions, indicates control, at least in part, of the laboratory.

The fourth characteristic, at proposed § 1112.11(c)(4), would consider a laboratory to be governmental if any of the laboratory's management or technical personnel are government employees. This direct involvement by the government in the operation of the laboratory would represent control in part.

The fifth characteristic, at proposed § 1112.11(c)(5), which would signify a governmental laboratory is if the laboratory has a subordinate position to a governmental entity in its external organizational structure. We would except the circumstance where the only relationship the laboratory has with the governmental entity is that of a regulated entity. In that sense, most laboratories in existence are associated administratively with a government, and we do not consider the existence of governmental regulations applicable to a laboratory to establish governmental control. (For example, the fact that a laboratory may be subject to certain employment requirements or subject to tax regulations does not establish that the laboratory is a government laboratory.) Instead, we intend to consider those laboratories that are organizationally a part of, or formally linked to, the government to be governmental laboratories. In those cases, even if the government is not an owner, it has the means of controlling the laboratory.

Finally, the sixth characteristic, at proposed § 1112.11(c)(6), would list situations in which government control of a laboratory is evident via the authority the government has over the laboratory. We propose that if a government can determine, establish, alter, or otherwise affect the laboratory's testing outcomes, its budget or financial decisions, its organizational structure or continued existence, or whether the laboratory may accept particular offers of work, then the laboratory would be considered governmental.

2. Proposed § 1112.13—How does a third party conformity assessment body apply for CPSC acceptance?

Proposed § 1112.13 would describe how a third party conformity assessment body may apply for CPSC acceptance of its accreditation. We propose to use the authority granted in section 14(a)(3)(C) of the CPSA to designate signatories to the ILAC–MRA to accredit laboratories to ISO/IEC 17025:2005. For a laboratory to be able to conduct tests under section 14 of the CPSA, however, the CPSC must affirmatively accept that laboratory's accreditation.

Proposed § 1112.13(a) would relate the initial baseline requirements applicable to all laboratory applicants. The proposed baseline requirements are substantially similar to the baseline requirements in the notices of requirements, although the application form (CPSC Form 223) would be revised to correspond with other changes in the proposed rule. The first baseline requirement would be a completed application, CPSC Form 223. On a revised CPSC Form 223, the laboratory would attest to certain facts and characteristics concerning its business, which would determine whether the applicant is independent, firewalled, or governmental. If the laboratory is considered firewalled or governmental, the online CPSC Form 223 will prompt the laboratory to submit the requisite additional documentation. On a revised CPSC Form 223, the laboratory also would attest that it has read, understood, and agrees to the regulations in this part. Proposed § 1112.13(a) also would require that the laboratory update its CPSC Form 223 whenever any information previously supplied on the form changes.

The second baseline criteria would be an accreditation certificate. Each laboratory would be required to be accredited to ISO/IEC Standard 17025:2005, ''General requirements for the competence of testing and calibration laboratories.'' Because we are proposing to require compliance with a standard that is already published, we must incorporate that standard by reference into these regulations. The proposed rule would note that the Director of the Federal Register approved the incorporation by reference of ISO/IEC 17025:2005 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. It would note that readers may obtain a copy of ISO/IEC 17025:2005 from the International Organization for Standardization (ISO), 1, ch. de la Voie-Creuse, Case postale 56, CH–1211 Geneva 20, Switzerland; Telephone +41 22 749 01 11, Fax +41 22 733 34 30; *http://www.iso.org/iso/catalogue_detail.htm?csnumber=39883.* Readers may also 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.*

The proposed rule would require accreditation by an accreditation body that is a signatory to the ILAC–MRA. All laboratories also would be required to furnish their statement of scope, and it would have to clearly identify the CPSC rule(s) and/or test method(s) for which CPSC acceptance is sought.

Proposed § 1112.13(b) would state the additional requirements for firewalled laboratories. Section 14(f)(2)(D) of the CPSA mandates that a laboratory only may be accepted as firewalled if the Commission, by order, finds that:

(i) [Acceptance] of the conformity assessment body would provide equal or greater consumer safety protection than the manufacturer's or private labeler's use of an independent third party conformity assessment body; and

(ii) [T]he conformity assessment body has established procedures to ensure that—

(I) [I]ts test results are protected from undue influence by the manufacturer, private labeler, or other interested party;

(II) [T]he Commission is notified immediately of any attempt by the manufacturer, private labeler or other interested party to hide or exert undue influence over test results; and

(III) [A]llegations of undue influence may be reported confidentially to the Commission.

15 U.S.C. 2063(f)(2)(D).

To evaluate whether a laboratory satisfies these criteria, the proposed rule would require that a laboratory seeking CPSC-accepted firewalled status submit copies of various documents to the CPSC. First, the proposed rule would require the laboratory to submit copies of certain established policies and procedures. The laboratory would need to submit its policies and procedures that explain how test results are protected from undue influence by the manufacturer, private labeler, or other interested party. The purpose of reviewing such documents would be to assess whether the laboratory has established the necessary written procedures to preserve its independence from the manufacturer or private labeler. We also would require the laboratory to submit copies of established policies and procedures, indicating that the CPSC will be notified immediately of any attempt to hide or exert undue influence over test results, and policies and procedures explaining that an allegation of undue influence may be reported confidentially to the CPSC. The purpose of reviewing these documents is to ensure that the laboratory has written procedures in place that address when and how the CPSC will be notified of any attempt at undue influence.

Second, the proposed rule would require an applicant laboratory seeking firewalled status to supply copies of training documents, including a description of the training program content, showing how employees are trained on the three policies just described. We propose to require this training annually. If an employee receives such training only once, the employee may forget the information over the course of time, or the importance of the information would not be reinforced. In addition, the issue of staff turnover presents a risk that new employees would not receive the training. An annual training requirement would address these risks.

Third, proposed § 1112.13(b)(2) would require training records listing the staff members who received the training and bearing their signatures. The training records would include training dates, location, and the name and title of the individual providing the training. We propose to require the submission of these training-related documents so that we may assess whether the laboratory is sufficiently and effectively communicating to its employees the need to protect the testing process from undue influence, and that the employees may notify the CPSC immediately and confidentially of any attempt by a manufacturer, private labeler, or other interested party to hide or exert undue influence over test results.

Proposed § 1112.13(b)(2)(iv) and (v) would require firewalled laboratory applicants to submit two organizational charts. One chart would be an organizational chart(s) of the laboratory itself. It would include the names of all personnel, both temporary and permanent, and their reporting relationship within the laboratory. The other organizational chart would identify the reporting relationships of the laboratory within the broader organization (using both position titles and staff names). Finally, we also would require a list of all laboratory personnel with reporting relationships outside of the laboratory. The list would identify the name and title of the relevant laboratory employee(s) and the names, titles, and employer(s) of all individuals outside of the laboratory to whom they report. The organizational charts and the list of employees with outside reporting relationships would help us determine the degree to which the laboratory is independent of the manufacturer or private labeler.

If the Commission determines that the firewalled-specific documents indicate that the laboratory has sufficient safeguards against and procedures concerning undue influence in place, and the laboratory satisfies the baseline criteria, including ISO/IEC 17025:2005 accreditation by an ILAC–MRA signatory body, then the Commission will consider that the applicant laboratory would provide equal consumer safety protection than the manufacturer's or private labeler's use of an independent laboratory.

Proposed § 1112.13(c) would state the additional accreditation requirements applicable to governmental laboratories. Section 14(f)(2)(B) of the CPSA mandates that the Commission may accept the accreditation of a governmental laboratory if:

(i) [T]o the extent practicable, manufacturers or private labelers located in any nation are permitted to choose conformity assessment bodies that are not owned or controlled by the government of that nation;

(ii) [T]he entity's testing results are not subject to undue influence by any other person, including another governmental entity;

(iii) [T]he entity is not accorded more favorable treatment than other third party conformity assessment bodies in the same nation who have been accredited under [section 14];

(iv) [T]he entity's testing results are accorded no greater weight by other governmental authorities than those of other accredited third party conformity assessment bodies accredited under [section 14]; and

(v) [T]he entity does not exercise undue influence over other governmental authorities on matters affecting its operations or on decisions by other governmental authorities controlling distribution of products based on outcomes of the entity's conformity assessments.

15 U.S.C. 2063(f)(2)(B).

To evaluate whether a laboratory satisfies these criteria, the proposed rule would require a governmental laboratory to submit a description that can be in the form of a diagram, which illustrates relationships with other entities, such as government agencies and joint venture partners. Such a document would give us basic information concerning the nature of the relationship between the laboratory and the government. In addition, we would require the laboratory and the relevant governmental entity to each respond to a questionnaire. The questionnaires are designed to elicit information related to the five statutory criteria.

Third, we would require a governmental laboratory to submit a copy of an executed memorandum that addresses undue influence. The purpose of the memorandum is to provide affirmative and continuous communication to the laboratory staff concerning the management policies regarding undue influence, and the staff's responsibilities in implementing the policies. The memorandum would be on company letterhead, from the senior management of the laboratory, and directed to all laboratory staff. The memorandum must be in the primary written language used for business communications in the area in which the laboratory is located, and, if that language is not English, then the laboratory must provide an English translation. The memorandum would need to be displayed prominently at the laboratory for as long as the laboratory is accepted by the CPSC.

The proposed rule would require the memorandum to state certain policies. It would require that the memorandum state that the laboratory's policy is to reject undue influence. We also would have the memorandum require employees to report immediately, to their supervisor or some other designated laboratory official, any attempt at undue influence. It would require the memorandum to state that the laboratory will not tolerate violations of the undue influence policy.

The fourth and final document to be required from governmental laboratory applicants would be an attestation. We would require a senior official of the governmental laboratory, who has the authority to make binding statements of policy on behalf of the laboratory, to attest to several statements related to the application, including that the laboratory does not receive and will not accept favorable treatment from any governmental entity with regard to products for export to the United States that are subject to CPSC jurisdiction. Among other things, the senior official of the governmental laboratory would have to attest that the information in the laboratory's application continues to be accurate, unless the laboratory notifies the CPSC otherwise. Thus, the senior official would be acknowledging a duty to inform the CPSC if any information submitted as part of the application has changed. As another example, the proposal would require the senior official to attest that the laboratory will not conduct CPSC tests in support of a Children's Product Certificate for products produced by a governmental entity that has any ownership or control of the laboratory. The attestation gives us an additional level of assurance that is unique to intergovernmental relationships.

Finally, the proposed rule would state that, if our approval of a governmental laboratory application is dependent upon a recently changed circumstance in the relationship between the laboratory and the governmental entity, and/or a recently changed policy of the related governmental entity, we may require the relevant governmental entity to attest to the details of the new relationship or policy. Such a provision would enable us to verify the changed circumstance prior to our acceptance of the governmental laboratory.

Proposed § 1112.13(d) would state that if a laboratory satisfies both the criteria for governmental status and the criteria for firewalled status, such a laboratory would be required to apply under both categories.

Proposed § 1112.13(e) would require that all application materials be in English. Proposed § 1112.13(f) would require that CPSC Form 223 and all required accompanying documentation be submitted electronically via the CPSC Web site. We have established an electronic application system accessed via our Internet site at: *http://www.cpsc.gov/about/cpsia/labaccred.html.* Proposed § 1112.13(g) would reserve the authority to require additional information from an applicant laboratory to determine whether the laboratory meets the relevant criteria. This provision would allow us to gather additional information if the initial information supplied by an applicant laboratory was insufficient. This paragraph also would state that we may, before acting on an application, verify the accreditation certificate and statement of scope directly from the accreditation body.

Finally, proposed § 1112.13(h) would provide that a laboratory may retract an application at any time before the CPSC has acted on it. We would note, however, that a retraction would not end or nullify any enforcement action that the CPSC is authorized to pursue.

3. Proposed § 1112.15—When can a third party assessment body apply for CPSC acceptance for a particular CPSC rule and/or test method?

Proposed § 1112.15(a) would state, consistent with section 14(a)(3) of the CPSA, that a laboratory may apply to the CPSC for acceptance of its accreditation to test a children's product to a particular CPSC rule and/or test method once the Commission has published the requirements for accreditation of third party conformity assessment bodies to assess conformity with that rule and/or test method. A laboratory would be able to apply for acceptance to more than one CPSC rule and/or test method at a time. Alternatively, a laboratory also would be able to apply separately for various CPSC rules and/or test methods. A laboratory would only be authorized to issue test results for purposes of section 14 of the CPSA for tests that fall within the CPSC rules and/or test methods for which its accreditation has been accepted by the CPSC.

Proposed § 1112.15(b) would list the rules and test methods for which the Commission has published the requirements for accreditation of laboratories. The list is current through August 10, 2011. When any final rule resulting from this proposed rule publishes, we intend to add to this list those CPSC rules and/or test methods for which we have published proposed requirements between October 1, 2011 and the date of the final rule. After any final rule publishes, additions or revisions to this list would be proposed as amendments to this section.

Some notices of requirements contained unique provisions related to exactly what a laboratory's statement of scope must indicate for the CPSC to accept that accreditation. Those unique provisions are included in this list.

In the **Federal Register** of September 20, 2011, we published a proposed rule to establish a safety standard for play yards. *See* 76 FR 58167, (September 20, 2011). The standard would be codified at 16 CFR part 1221. We are working on a final rule to establish a safety standard for play yards and hope to issue it in the near future. Consequently, proposed § 1112.15(b)(7) would include 16 CFR part 1221 among the list of CPSC rules and/or test methods for accreditation for third party conformity assessment bodies. If, however, the Commission does not issue a final rule to establish a safety standard for play yards, we will revise § 1112.15(b) accordingly, as part of this rulemaking process.

In the **Federal Register** of February 10, 2012, we published a proposed rule to establish a safety standard for infant swings. *See* 77 FR 7011, (February 10, 2012). The standard would be codified at 16 CFR part 1223. We are working on a final rule to establish a safety standard for infant swings and hope to issue it in the near future. Consequently, proposed § 1112.15(b)(8) would include 16 CFR part 1223 among the list of CPSC rules and/or test methods for accreditation for third party conformity assessment bodies. If, however, the Commission does not issue a final rule to establish a safety standard for infant swings, we will revise § 1112.15(b) accordingly, as part of this rulemaking process.

We have included the notice of requirements for the safety standard for portable bedrails at proposed § 1112.15(b)(9) in the list because we have published a final rule establishing the safety standard for bed rails (16 CFR part 1224) in the **Federal Register**. *See* 77 FR 12182 (February 29, 2012).

We will accept retrospective testing for 16 CFR part 1224 under certain circumstances. For the tests contained in 16 CFR part 1224, testing before the effective date of 16 CFR part 1112 will be accepted, if the following conditions are met:

- The children's product was tested by a third party conformity assessment body accredited to ISO/IEC 17025:2005 by a signatory to the ILAC–MRA at the time of the test. The scope of the third party conformity body accreditation must include testing in accordance with

16 CFR part 1224. For firewalled third party conformity assessment bodies, the firewalled third party conformity assessment body must be one that the Commission, by order, has accredited on or before the time that the children's product was tested, even if the order did not include the tests contained in 16 CFR part 1224. For governmental third party conformity assessment bodies, the governmental third party conformity assessment body must be one whose accreditation was accepted by the Commission, even if the scope of accreditation did not include the tests contained in 16 CFR part 1224.

- The third party conformity assessment body's application for acceptance of its accreditation is accepted by the CPSC on or after May 24, 2012 and before the effective date of 16 CFR part 1112.
- The test results show compliance with 16 CFR part 1224.
- The children's product was tested on or after the date of publication in the **Federal Register** of the final rule for 16 CFR part 1224, and before the effective date of 16 CFR part 1112.
- The testing laboratory's accreditation remains in effect through the effective date of 16 CFR part 1112.

Additionally, the notice of requirements pertaining to 16 CFR part 1303, Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint, is listed at proposed § 1112.15(b)(10). According to our initial notice of requirements for part 1303 (73 FR 54564 (Sept. 22, 2008)), in order for us to accept a laboratory to test children's products for conformity with the lead-paint ban, the laboratory's scope of accreditation had to include 16 CFR part 1303 (73 FR 54565). Part 1303 does not contain a test method. We received comments from the public, asking us to specify test methods to ensure that accreditation bodies are able to determine the acceptable technologies and methods for lead analyses. On April 5, 2011, we published a revision to the notice of requirements for part 1303 to specify particular test methods, one or more of which laboratories must have in their scope of accreditation in order for us to accept their accreditation to test for conformity with the lead paint ban.

Proposed § 1112.15(b)(10) would list the approved test methods for 16 CFR part 1303, ''Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint'' and require a third party conformity assessment body to reference one or more of the approved test methods in its statement of scope:

- CPSC Standard Operating Procedure for Determining Lead (Pb) in Paint and Other Similar Surface Coatings, CPSC–CH–E1003–09 and/or CPSC–CH–E1003–09.1;
- ASTM F 2853–10, ''Standard Test Method for Determination of Lead in Paint Layers and Similar Coatings or in Substrates and Homogenous Materials by Energy Dispersive X–Ray Fluorescence Spectrometry Using Multiple Monochromatic Excitation Beams.''

The original notice of requirements pertaining to 16 CFR part 1303 did not require reference to any particular test method. *See* 73 FR 54564 (Sept. 22, 2008). In order to give third party conformity assessment bodies sufficient time to amend their scope of accreditation to include one or more of the test methods listed in proposed § 1112.15 (b)(10):

- Third party conformity assessment bodies that were listed on the CPSC's Web site as accepted to 16 CFR part 1303 on April 5, 2011 (the date when the CPSC published the revision to the notice of requirements in the **Federal Register**, *see* 76 FR 18646) have until April 5, 2013, to reapply and be accepted by the Commission with an statement of scope that includes one or more of the test methods listed in proposed § 1112.15(b)(10);
- Third party conformity assessment bodies that were not listed on the CPSC Web site as accepted to 16 CFR part 1303 on April 5, 2011, and apply for acceptance to 16 CFR part 1303 on or before April 5, 2012, have the option to apply without reference to one or more of the test methods listed in proposed § 1112.15(b)(10);
- Third party conformity assessment bodies that were not listed on the CPSC Web site as accepted to 16 CFR part 1303 on April 5, 2011, and apply for acceptance after April 5, 2012, must have one or more of the test methods listed in proposed § 1112.15(b)(10) on their statement of scope.

Proposed § 1112.15(b)(11) would reference 16 CFR part 1420, Safety Standard for All-Terrain Vehicles. We note that recently, we published a final rule in the **Federal Register**, revising 16 CFR part 1420. *See* 77 FR 12197 (February 29, 2012). The final rule makes American National Standard, ANSI/SVIA–1–2010, the new mandatory standard for ATVs, and the new standard is effective April 30, 2012, replacing the previous standard, which was designated ANSI/SVIA–1–2007. For purposes of testing youth ATVs, however, ANSI/SVIA 1–2010 is functionally equivalent to ANSI/SVIA 1–2007 because the changes specified in the 2010 edition do not substantially change the requirements applicable to, nor do they affect the associated conformance testing of youth ATVs. Consequently, the Commission is continuing its acceptance of accreditation of the third party conformity assessment body to test youth ATVs. (As of February 7, 2012, we had accepted the accreditation of a single third party conformity assessment body to test youth ATVs.) Thus, the third party conformity assessment body should test youth ATVs for compliance with ANSI/SVIA 1–2010, as incorporated by reference in 16 CFR part 1420. Based on such testing, manufacturers of youth ATVs should issue certificates under section 14(a)(2) of the CPSA.

Third party conformity assessment bodies that are accredited to test youth ATVs to the 2007 version of the ATV standard for children's product certification purposes do not need to become reaccredited to the 2010 revision before the next time their accreditation body reassesses them to the ATV standard. However, they may elect to do so. Third party conformity assessment bodies, whose accreditation to test to the 2007 version of the ATV standard has previously been accepted by the CPSC, must be accredited to the 2010 revision of the ATV standard when reassessed by their accreditation body, and submit a Form 223 with the applicable accompanying documents to the CPSC in order to continue to have their accreditation to the ATV standard accepted. We will revise our listing of the third party conformity assessment body when it becomes accredited to the ATV standard and the CPSC accepts their application for accreditation.

For third party conformity assessment bodies that applied for CPSC acceptance of accreditation to the 2007 version of the ATV standard before we accepted the 2010 revision of the ATV standard as a mandatory standard, and the CPSC accepts that accreditation, test results from the third party conformity assessment body can be used for children's product certification purposes until the third party conformity assessment body is reassessed by its accreditation body to the ATV standard. If the third party conformity assessment body wishes to have its accreditation continue to be accepted by the CPSC after it is reassessed by its accreditation body, it must become accredited to the 2010 revision of the standard and submit a new Form 223 with accompanying documents to the CPSC, requesting acceptance of its accreditation to the 2010 revision of the standard.

New third party conformity assessment body applicants that apply for CPSC acceptance on or after May 24, 2012 must be accredited to the 2010 revision when applying for CPSC acceptance of their accreditation to test youth ATVs.

We also note four revisions to our lead-content test methods. Proposed § 1112.15(b)(28) and (29), Lead Content in Children's Metal Jewelry and Limits on Total Lead in Children's Products: Children's Metal Products, would contain two proposed revisions. First, the notices of requirements related to testing for lead content in children's metal jewelry (73 FR 78331 (Dec. 22, 2008)) and total lead in children's products (74 FR 55821 (Oct. 29, 2009)) each listed the test method numbered CPSC–CH–E1001–08 as the required test method for testing for lead in children's metal products (including metal jewelry). We revised that test method in June 2010. The revised method allows for some alternative, simplified procedures for certain portions of the test method. Second, we propose allowing the use of XRF spectrometry to determine the lead content in certain metals. The option of using the revised test methods would be reflected in proposed § 1112.15(b)(28) and (29). Accordingly, the proposed rule would provide that, to be considered for CPSC-acceptance of accreditation to test for lead in children's metal products (including metal jewelry), an applicant laboratory may have either Test Method CPSC–CH–E1001–08 (the original test method) and/or Test Method CPSC–CH–E1001–08.1 (the revised test method allowing alternative, simplified procedures) and/or the proposed revision of the test method, Test Method CPSC–CH–E1001–08.2 (allowing the use of XRF for certain metals) in its scope of accreditation.

Third, proposed § 1112.15(b)(30), Limits on Total Lead in Children's Products: Non-Metal Children's Products, also would contain a proposed revision relative to the original notice of requirements. The notice of requirements related to testing for total lead in children's products (74 FR 55821 (Oct. 29, 2009)) listed the test method numbered CPSC–CH–E1002–08 as the required test method for testing for lead in non-metal children's products. We revised that test method in June 2010; the revised method allows for some alternative, simplified procedures for certain portions of the test method. Fourth, we propose allowing the use of XRF to determine the lead content in glass materials and crystals. This option would be reflected in proposed § 1112.15(b)(30). Accordingly, the proposed rule would state that, to be considered for CPSC acceptance of accreditation to test for lead in non-metal children's products, an applicant laboratory may have Test Method CPSC–CH–E1002–08 (the original test method) and/or Test Method CPSC–CH–E1002–08.1 (the revised test method allowing alternative, simplified procedures) and/or Test Method CPSC–CH–E1002–08.2 (allowing the use of XRF for glass materials and crystals) in its scope of accreditation.

We have identified a potential opportunity to reduce the testing burdens for certification of conformity related to the new requirements in ASTM F 963–11. Among the changes in ASTM F 963–11, are changes in the requirements and test methods for eight elements of interest: antimony, arsenic, barium, cadmium, chromium, lead, mercury, and selenium. ASTM F 963–11 extends the requirements from prior versions (which had limits for these elements in surface coatings) to consider, in addition, these elements in substrates. For substrates and surface coatings, ASTM F 963–11 limits soluble migration of each of these elements when tested in dilute acid. Additionally, a new optional screening test is established in section 8.3.1 ASTM F 963–11, which is based on the total concentration of those elements, determined by digesting the samples completely, in hot, concentrated, strong acids, using methods based on CPSC test methods for lead content.

ASTM F 963–11 allows the screening test from section 8.3.1 to be performed on a toy to establish that the total concentration of each of the eight elements of interest is lower than each of the soluble limits for those elements. For example, a toy that has only 10 ppm of each of those elements could not possibly leach more than the soluble limits for any of the elements (which are all greater than 10 ppm); and thus, the solubility test could be skipped. In another example, a toy that contained 2,000 ppm barium would not pass the screening test for barium and would require solubility testing according to section 8.3 to determine how much barium would leach out (compared to the limit of 1,000 ppm soluble barium).

We recognize that firms potentially could reduce testing costs if a single test would meet the screening test of section 8.3.1 of ASTM F 963–11 and the CPSIA lead content requirements for paint, metals, or nonmetals. The methods provided in section 8.3.1 of ASTM F 961–11 refer to CPSC test methods, but with a prescribed modification. The CPSC test methods for lead in paint (*http://www.cpsc.gov/about/cpsia/CPSC-CH-E1003-09_1.pdf*), lead in nonmetals (*http://www.cpsc.gov/about/cpsia/CPSC-CH-E1002-08_1.pdf*), and lead in metals (*http://www.cpsc.gov/about/cpsia/CPSC-CH-E1001-08_1.pdf*) each allow for modifications based on sound chemical judgment and knowledge. CPSC staff tested a variety of well-characterized paint, metal, and nonmetal materials, and based upon the results and our professional judgment and experience, we found that the modifications detailed in section 8.3.1.2 of ASTM F 963–11 represent sound chemical judgment to improve the recovery of antimony in certain samples. In addition, we believe that they are acceptable for use for lead in paint, lead in metals, and lead in nonmetals and are considered to be within the existing scope of allowable changes to the CPSC methods. Because these modifications are considered acceptable, a CPSC-accepted testing laboratory accredited to the CPSC method for lead in paint, CPSC–CH–E1003–09, for example, could test the paint from a toy, according to CPSC–CH–E1003–09, with the modifications provided in section 8.3.1.2 of ASTM F 963–11, and still fulfill the requirements of CPSC–CH–E1003–09 to certify lead content and use the same testing to determine the screening levels for the other elements of interest. Because samples that fail the screening may pass section 4.3.5 solubility limits, a testing laboratory must be accredited in ASTM F 963–11, Section 8.3 to have its test results used to demonstrate compliance with the limits given in section 4.3.5. In the example above, the testing for lead in paint, with the modifications, could be used to determine if the elements of interest pass the screening test and the toy can be certified to section 4.3.5, without additional testing; paints exceeding screening limits for any of the elements of interest would have to be tested according to section 8.3 for heavy element solubility.

Proposed § 1112.15(b)(31) would reference the limits on phthalates in children's toys and child care articles. The notice of requirements pertaining to phthalates approved of two test methods, at least one of which must be included in a laboratory's accreditation scope document in order for us to accept the laboratory to test for the limits on phthalates, and both test methods are included in proposed § 1112.15(b)(31).

The notice of requirements pertaining to toys also contained unique provisions related to exactly what a laboratory's statement of scope must indicate for the CPSC to accept that accreditation.

Pursuant to section 106 of the CPSIA, the provisions of ASTM International's (formerly the American Society for Testing and Materials) (''ASTM'') Standard Consumer Safety Specification for Toy Safety, F 963, are considered to be consumer product safety standards issued by the Commission. For reasons explained in the notice of requirements, *see* 76 FR 46598, 46599 through 46600 (Aug. 3, 2011), only certain provisions of ASTM F 963 are subject to third party testing requirements. We will accept the accreditation of laboratories only to those sections of ASTM F 963 that are subject to third party testing requirements. The list of sections of ASTM F 963 for which laboratories may apply for CPSC acceptance, which must each be specifically referenced in the laboratories' scope documents, was contained in the notice of requirements and is reproduced in proposed § 1112.15(b)(32).

Additionally, proposed § 1112.15(b)(32) would reflect recent revisions to the ASTM F 963 standard. On February 15, 2012, the Commission, pursuant to section 106(g) of the CPSIA, accepted the revised toy standard (ASTM F 963–11) as a consumer product safety standard. 77 FR 10358, (February 22, 2012). ASTM F 963–11 is, in many ways, equivalent or functionally equivalent to ASTM F 963–08. For example, in the notice of requirements that we issued on August 3, 2011, some 23 sections in ASTM F 963–08 remain unchanged in ASTM F 963–11, and another seven sections in ASTM F 963–11 are functionally equivalent to their earlier counterparts in ASTM F 963–08. (By ''functionally equivalent,'' we mean that the standards organization made certain changes in the revised standard compared to the earlier standard, but the changes are not substantial and do not affect the associated conformance testing.) Consequently, the Commission is continuing its acceptance of accreditation of third party conformity assessment bodies for those provisions in ASTM F 963–11 that are equivalent or functionally equivalent to their corresponding provisions in ASTM F 963–08. The third party conformity assessment bodies should test toys for compliance with ASTM F 963–11, and based on such testing, manufacturers should issue certificates under section 14(a)(2) of the CPSA.

Third party conformity assessment bodies that are accredited to test to provisions of ASTM F 963–08 that are equivalent or functionally equivalent for children's product certification purposes do not need to become reaccredited to the ASTM F 963–11 revision before the next time their accreditation body reassesses them to ASTM F 963 toy standard. However, they may elect to do so. Third party conformity assessment bodies whose accreditation to test to ASTM F 963–08 has previously been accepted by the CPSC must be accredited to the ASTM F 963–11 revision when reassessed by their accreditation body, and they must submit a Form 223 with the applicable accompanying documents to the CPSC in order to continue to have their accreditation to ASTM F 963–11 accepted. We will revise our listing of the third party conformity assessment body when it becomes accredited to the ASTM F 963–11 standard and the CPSC accepts their application for accreditation.

For third party conformity assessment bodies that applied for CPSC acceptance of accreditation to ASTM F 963–08 before the Commission accepted ASTM F 963–11 as a mandatory standard, and before we accepted that accreditation, test results from the third party conformity assessment body for those provisions of ASTM F 963–08 that are equivalent or functionally equivalent to ASTM F 963–11, can be used for children's product certification purposes until the third party conformity assessment body is reassessed by its accreditation body to the ASTM F 963 toy standard. If the third party conformity assessment body wishes to have its accreditation continue to be accepted by the CPSC after it is reassessed by its accreditation body, it must become accredited to the ASTM F 963–11 and submit a new Form 223 with accompanying documents to the CPSC, requesting acceptance of its accreditation to the 2011 revision of the standard.

New third party conformity assessment body applicants that apply for CPSC acceptance on or after May 24, 2012 must be accredited to the ASTM F 963–11 revision when applying for CPSC acceptance of their accreditation to test toys under ASTM F 963.

ASTM F 963–11, however, did make substantial changes to certain provisions in ASTM F 963–08 or added new testing or requirements. These changes are seen in the following sections of ASTM F 963–11:

- Section 4.3.5.1(2), Surface Coating Materials—Soluble Test for Metals;
- Section 4.3.5.2, Toy Substrate Materials;
- Section 4.15, Stability and Overload Requirements;
- Section 4.37, Yo-Yo Elastic Tether Toys; and
- Section 4.39, Jaw Entrapment in Handles and Steering Wheels.

Therefore, proposed § 1112.15(b)(32) would add section 4.3.5.1(2) from ASTM F 963–11, ''Surface Coating Materials—Soluble Test for Metals,'' and section 4.3.5.2, ''Toy Substrate Materials,'' to the list of provisions in ASTM F 963 that require third party testing. The proposed rule, like the earlier notice of requirements for ASTM F 963–08, would continue to list section 4.15, ''Stability and Overload Requirements,'' section 4.37, ''Yo-Yo Elastic Tether Toys,'' and section 4.39, ''Jaw Entrapment in Handles and Steering Wheels''; but third party conformity assessment bodies should understand that these sections in ASTM F 963–11 are not equivalent to ASTM F 963–08. Furthermore, if we had accepted the third party conformity assessment body's accreditation to sections 4.15, 4.37, or 4.39 of ASTM F 963–08, the third party conformity assessment body should become accredited to, and apply for, CPSC acceptance for its accreditation under sections 4.15, 4.37, and 4.39 of ASTM F 963–11.

Proposed § 1112.15(b)(32) would establish and codify those provisions of ASTM F 963–11 that would require accreditation and third party testing. However, we are aware that another revision to ASTM F 963 may occur (see *http://news.consumerreports.org/baby/2012/01/revised-toy-safety-standards-are-in-the-works.html*. If after the proposed rule is published in the **Federal Register**, the Commission receives a revision to ASTM F 963–11 from ASTM and subsequently accepts the revision, we will (assuming that we issue a final rule) revise § 1112.15(b)(32) in the final rule to reflect the most current version of ASTM F 963 approved by the Commission in lieu of ASTM F 963–11.

We will accept testing on children's products conducted by a third party conformity assessment body accepted by the Commission for those sections of ASTM F 963–08 that are considered equivalent or functionally equivalent to ASTM F 963–11, as discussed above. For those tests in ASTM F 963–11 that have no equivalent or functionally equivalent test in ASTM F 963–08, testing before the effective date of ASTM F 963–11 will be accepted, if the following conditions are met:

- The children's product was tested by a third party conformity assessment body accredited to ISO/IEC 17025:2005 by a signatory to the ILAC–MRA at the time of the test. The scope of the third party conformity assessment body accreditation must include the tests contained in the applicable nonequivalent section of ASTM F 963–

11. For firewalled third party conformity assessment bodies, the firewalled third party conformity assessment body must be one that the Commission, by order, has accredited, on or before the time that the children's product was tested, even if the order did not include the nonequivalent tests contained in ASTM F 963–11. For governmental third party conformity assessment bodies, the governmental third party conformity assessment body must be one whose accreditation was accepted by the Commission, even if the scope of accreditation did not include the tests for the nonequivalent tests contained in ASTM F 963–11.

- The third party conformity assessment body's application for acceptance of its accreditation is accepted by the CPSC on or after May 24, 2012 and before the effective date for 16 CFR part 1112.
- The test results show compliance with the nonequivalent section(s) of ASTM F 963–11.
- The children's product was tested on or after February 22, 2012, and before the effective date of 16 CFR part 1112.
- The third party conformity assessment body's accreditation remains in effect through the effective date of 16 CFR part 1112.

4. Proposed § 1112.17—How will the CPSC respond to each application?

Proposed § 1112.17 would establish the procedures related to CPSC action on a third party conformity assessment body's application for CPSC acceptance of its accreditation.

Proposed § 1112.17(a) would state that CPSC staff will review each application, and they may contact applicant laboratories with questions or to request submission of missing information.

Proposed § 1112.17(b), consistent with section 14(f)(2)(D) of the CPSA, would state that an application from a firewalled laboratory will be accepted by order of the Commission, if the Commission makes certain findings that are required by the statute; the required findings are enumerated. We intend that CPSC staff will act on applications from independent and governmental laboratories, as long as such action is consistent with a proper delegation of authority from the Commission.

Proposed § 1112.17(c) would state that the CPSC will communicate its decision on each application, in writing, to the applicant; the written decision may be by electronic mail.

5. Proposed § 1112.19—How does the CPSC publish information identifying third party conformity assessment bodies that have been accepted?

In accordance with section 14(a)(3)(E) of the CPSA, proposed § 1112.19 would provide that the CPSC will maintain on its Web site an up-to-date listing of third party conformity assessment bodies whose accreditations have been accepted, and the scope of each acceptance. We would update the listing regularly to account for changes of information and status, such as the addition of CPSC rules and/or test methods to a scope of accreditation; changes to accreditation certificates; or a new address. In addition, we propose to update the listing to indicate changes in status, such as if a laboratory voluntarily discontinues its participation with the CPSC, or if the CPSC suspends or withdraws our acceptance of the accreditation of a laboratory (which we discuss later in this document).

6. Proposed § 1112.21—May a third party conformity assessment body use testing methods other than those specified in the relevant CPSC rule and/or test method?

Proposed § 1112.21 would require a CPSC-accepted laboratory to use only a test method specified by the CPSC for a particular CPSC rule and/or test method, for any test conducted for purposes of section 14 of the CPSA. The proposed rule would require laboratories to use a CPSC-specified test method(s) for several reasons. First, a specified test method firmly establishes how to generate test results that are acceptable to the CPSC as indicative of compliance, so there may be a common understanding between laboratories and the CPSC. Second, by specifying the test method, greater consistency among tests conducted at different laboratories is established. Variations between laboratory tests are reduced. Finally, it serves as a common procedure that accreditation bodies can use to evaluate a laboratory for a particular CPSC rule and/or test method. By evaluating to a CPSC-specified test method, the accreditation bodies can determine whether the laboratory meets competency requirements to carry out that particular test.

7. Proposed § 1112.23—May a CSPC-accepted third party conformity assessment body subcontract work conducted for purposes of section 14 of the CPSA?

The purpose of having each third party conformity assessment body satisfy CPSC requirements in order for its accreditation to be eligible for acceptance is to promote competent and consistent test results across laboratories. Proposed § 1112.23(a) would prohibit subcontracting of tests conducted for purposes of section 14 of the CPSA, unless the subcontract is to a CPSC-accepted laboratory. In addition, the CPSC's acceptance of the scope of accreditation of the subcontracting laboratory must include the test being subcontracted. For example, in order for Laboratory A to subcontract the test for lead-containing paint to Laboratory B, Laboratory B would need to have had its accreditation to 16 CFR part 1303 (lead-containing paint) accepted by the CPSC. In this example, we would refer to Laboratory A as the prime contractor, and Laboratory B would be the subcontractor.

Any violation of this provision would constitute compromising the integrity of the testing process and could be grounds for withdrawal of the CPSC's acceptance of the accreditation of the prime- and/or sub- contracting laboratory under proposed § 1112.47. Given this restriction and staff's concerns about compromising the integrity of the testing process, we request comment as to whether subcontracting ought to be allowed and, if so, under what circumstances. For example, for what reasons should subcontracting of the preparation of samples for flammability testing, such as laundering or dry cleaning, be allowed? We are also interested in comments regarding subcontracting under other CPSC regulations and the relationship between subcontracting and the technical competence and protection against undue influence of the third party testing program as a whole. Under what conditions could we allow the CPSC-accepted laboratory to vouch for the independence and technical competence of its subcontractors and their testing processes without requiring accreditation of the subcontractor by a signatory to the ILAC–MRA? How would subcontracting affect the recordkeeping requirements of this rule?

Proposed § 1112.23(b) would state that the provisions of part 1112 apply to all CPSC-accepted laboratories, even if they are a prime contractor and/or a subcontractor.

8. Proposed § 1112.25—what are a third party conformity assessment body's recordkeeping responsibilities?

Proposed § 1112.25 would require third party conformity assessment bodies to retain certain records related to the tests conducted for purposes of

section 14 of the CPSA. We are aware that ISO/IEC 17025:2005 contains some recordkeeping provisions of its own. For example, section 4.13 of ISO/IEC 17025:2005 addresses ''control of records'' and requires a laboratory to retain technical records ''for a defined period.'' However, proposed § 1112.25 would impose additional recordkeeping responsibilities beyond those established in ISO/IEC 17025:2005. Additional requirements are necessary because we have an interest in being able to investigate a noncompliant product and/or whether grounds exist for adverse action against a third party conformity assessment body. For example, if a product that fails to comply with a children's product safety rule is present in the market, and the product was tested by a CPSC-accepted laboratory, we would have an interest in reviewing the test records related to that product. Additionally, ISO/IEC 17025:2005 does not specify a record-retention period, which means different laboratories could retain their records for different periods of time. If we pursue an investigation, the records we would require in proposed § 1112.25 are those that would help us conduct that investigation. Some records, such as a report furnished to a customer where the report differs from the test record, may not be retained by some laboratories under ISO/IEC 17025:2005. Therefore, we would impose these recordkeeping requirements in addition to those imposed via ISO/IEC 17025:2005.

Proposed § 1112.25(a) would state that all required records must be legible. In terms of particular records, we would first require that all test reports and technical records related to tests conducted for purposes of section 14 of the CPSA be maintained for a period of at least five years from the date the test was conducted. We propose a 5-year retention period because the statute of limitations on civil penalties under the CPSA is five years. *See* 28 U.S.C. 2462. Next, the proposed rule would require that, in the case of a test report for a test conducted by a CPSC-accepted laboratory acting as a sub-contractor, the prime contractor's test report must clearly identify which test(s) was performed by a CPSC-accepted laboratory acting as a subcontractor(s), and the test report from the CPSC-accepted laboratory acting as a subcontractor must be appended to the prime contractor's test report.

Proposed § 1112.25(a) would require that, where a report for purposes of section 14 of the CPSA provided by the laboratory to a customer is different from the test record, the laboratory also must retain the report provided to the customer for a period of at least five years from the date the test was conducted. Finally, the proposed rule also would require any and all laboratory internal documents describing testing protocols and procedures (such as instructions, standards, manuals, guides, and reference data) that have applied to a test conducted for purposes of section 14 of the CPSA be retained for a period of at least five years from the date such test was conducted.

Proposed § 1112.25(b) would state that, upon request by the CPSC, the laboratory must make any and all of the records required by this section available for inspection, either in hard copy or electronic form, within 48 hours. We would require that, if the records are not in English, copies of the original records be made available to the CPSC within 48 hours, and an English translation of the records be made available by the laboratory within 30 calendar days of the date we requested an English translation.

9. Proposed § 1112.27—Must a third party conformity assessment body allow CPSC inspections related to investigations?

Proposed § 1112.27 would require that each CPSC-accepted third party conformity assessment body allow an officer or employee duly designated by the Commission to enter its facility and conduct an inspection as a condition of the continued CPSC-acceptance of its accreditation. Such inspections would not be routine and/or for the purpose of confirming that the laboratory satisfies accreditation requirements. We intend that audits (addressed in subpart C of part 1112) be the vehicle by which we confirm that a laboratory continues to satisfy the requirements necessary for our acceptance of its accreditation. Rather, such inspections would be limited to inspections related to a CPSC investigation into whether a ground exists for adverse action against a third party conformity assessment body. An ability to enter and inspect a laboratory would help us investigate circumstances, such as an allegation of undue influence or the presence in the market of a product that fails to comply with a children's product safety rule, yet is accompanied by a certificate based on a passing third party test result. In those cases, our investigation may need to include the laboratory so that we could attempt to obtain facts relevant to the case at hand.

We would conduct such inspections in accordance with 16 CFR 1118.2, *Conduct and Scope of Inspections.* Failure to cooperate with such an inspection would constitute failure to cooperate with an investigation and would be grounds for suspension under proposed § 1112.45.

10. Proposed § 1112.29—How does a third party conformity assessment body voluntarily discontinue its participation with the CPSC?

Proposed § 1112.29(a) would provide that a third party conformity assessment body may voluntarily discontinue participation as a CPSC-accepted laboratory at any time and for any portion of its scope that is accepted by the CPSC. It also would provide the procedural requirements for such voluntary discontinuance.

To voluntarily discontinue its participation as a CPSC-accepted laboratory, the laboratory would have to notify us in writing. This notification may be sent electronically. The notice would have to include the name, address, phone number, and electronic mail address of the laboratory and the person responsible for submitting the request. The notice also would need to include the scope of the discontinuance; the beginning date for the discontinuance; a statement that the laboratory understands that it must reapply for acceptance of the accreditation scope for which it is requesting discontinuance; and verification that the person requesting the discontinuance has the authority to make such a request on behalf of the laboratory.

Proposed § 1112.29(b) would state that we may verify the information submitted in a notice of voluntary discontinuance.

Proposed § 1112.29(c) would explain that, either upon receipt of a notice for voluntary discontinuance as a CPSC-accepted third party conformity assessment body or after verifying the information in a notice, we will update our Web site to indicate that we no longer accept the accreditation of the third party conformity assessment body as of the date provided and for the scope indicated in the notice.

Proposed § 1112.29(d) would note that we may begin or continue an investigation related to an adverse action under this part, or any other legal action, despite the voluntary discontinuation of a laboratory.

C. Subpart C—Audit Requirements for Third Party Conformity Assessment Bodies

1. Proposed § 1112.35(b)—When must an audit be conducted?

As explained in the audit final rule published elsewhere in this issue of the

Federal Register, for purposes of part 1112, an audit consists of two parts. The first part, known as ''reassessment,'' is an examination by an accreditation body to determine whether the third party conformity assessment body meets or continues to meet the conditions for accreditation. The second part, which we refer to as ''examination,'' is the resubmission of the ''Consumer Product Conformity Assessment Body Acceptance Registration Form'' (CPSC Form 223) and accompanying documentation by the laboratory, and the CPSC's examination of the resubmitted materials.

The reassessment portion of an audit is conducted, at a minimum, at the frequency established by its accreditation body. Proposed § 1112.35(b) would establish when the examination portion of an audit must be conducted.

Proposed § 1112.35(b)(1) would have each laboratory submit a new CPSC Form 223 and applicable accompanying documentation, no less than every two years. The proposed rule would begin the implementation of this provision by assigning an audit date to each CPSC-accepted laboratory. The initial audit date, which will be assigned based on such factors as when the laboratory was last accepted by the CPSC, and the expiration date of the laboratory's ISO/IEC 17025:2005 certificate, will be no sooner than three months, and no later than two years, after any final rule resulting from this proposed rule is published. Laboratories that were not previously CPSC-accepted laboratories and that apply to the CPSC after the publication of a final rule resulting from this proposed rule will be issued an audit date based upon the date of CPSC acceptance of accreditation as posted on the CPSC Web site.

Proposed § 1112.35(b)(2) would note that proposed § 1112.13(a)(1) would require a third party conformity assessment body to submit a new CPSC Form 223 whenever the information supplied on the form changes. If the third party conformity assessment body submits a new CPSC Form 223 to provide updated information, the third party conformity assessment body may elect to have the new CPSC Form 223 satisfy the audit requirement of proposed § 1112.35(b)(1). If the laboratory also intends to satisfy the audit requirement of proposed § 1112.35(b)(1), it would need to indicate that intent clearly when it submits a CPSC Form 223. In addition, the laboratory would need to upload all applicable accompanying documentation.

Proposed § 1112.35(b)(3) would state that, at least 30 days before the date by which a third party conformity assessment body must submit a CPSC Form 223 for audit purposes, we will notify the body, in writing, of the impending audit deadline. The notice may be delivered by electronic mail. A laboratory may request an extension of the deadline for the examination portion of the audit, but it must indicate how much additional time is requested, and it also must explain why such an extension is warranted. The CPSC will notify the laboratory whether its request for an extension has been granted.

D. Subpart D—Adverse Actions: Types, Grounds, Allegations, Procedural Requirements, and Publication

Proposed subpart D would implement section 14(e) of the CPSA. It would establish whether, when, and how we may deny a third party conformity assessment body's application and suspend and/or withdraw a previously-granted acceptance of a laboratory's accreditation. It also would establish how a person may submit to the CPSC information alleging a ground for adverse action, including an allegation of undue influence. This subpart also would address the publication of adverse actions.

1. Proposed § 1112.41—What are the possible adverse actions the CPSC may take against a third party conformity assessment body?

Proposed § 1112.41 would list the potential adverse actions we may take against a third party conformity assessment body. Proposed § 1112.41(a) lists the possible actions: denial of acceptance of accreditation; suspension of acceptance of accreditation; or withdrawal of acceptance of accreditation. These actions will each be discussed further below, in relation to the proposed sections that address each possible action.

Proposed § 1112.41(b) would state that withdrawal of acceptance of accreditation can be on a temporary or permanent basis, and the CPSC may immediately withdraw its acceptance in accordance with § 1112.53 of this part.

2. Proposed § 1112.43—What are the grounds for denial of an application?

Proposed § 1112.43(a) would list the bases for denying an application for acceptance of accreditation from a third party conformity assessment body. There would be three reasons for denying an application.

First, proposed § 1112.43(a)(1) would state that we may deny a laboratory's application if the laboratory failed to submit a complete application. We would state that all information and/or attestations required by CPSC Form 223 are necessary components of an application. We also would state that all accompanying documentation required in connection with an application is a necessary component of an application. We would provide notice of a deficiency and would deny an application if the laboratory failed to correct the deficiency within 30 days.

Proposed § 1112.43(a)(2) would provide the second basis upon which we would be able to deny an application. The proposed rule would address the submission of false or misleading information concerning a material fact(s) on either an application, any materials accompanying an application, or on any other information provided to the CPSC related to a laboratory's ability to become or to remain a CPSC-accepted laboratory. A fact would be considered material if its inclusion in the application, any materials accompanying an application, or on any other information provided to the CPSC, would have resulted in the application's denial.

Third, proposed § 1112.43(a)(3) would state that we may deny an application if the applicant laboratory failed to satisfy the necessary requirements described in § 1112.13, such as ISO/IEC 17025:2005 accreditation by an ILAC–MRA signatory accreditation body for the scope for which acceptance of accreditation is being sought.

Proposed § 1112.43(b) would state that the CPSC's denial of an application will follow the process described in § 1112.51 of this part.

3. Proposed § 1112.45—What are the grounds for suspension of CPSC acceptance?

Section 14(e)(3) of the CPSA states that the Commission may suspend the accreditation of a conformity assessment body if it fails to cooperate with the Commission in an investigation under section 14 of the CPSA. Proposed § 1112.45 would implement that statutory provision.

The procedures relevant to adverse actions would be addressed in proposed § 1112.51, which we will describe and discuss more fully below. For current purposes, however, we note that proposed § 1112.51(a) would provide that the CPSC may investigate when it is aware that grounds for an adverse action may exist. For example, if we receive an allegation of undue influence concerning a CPSC-accepted laboratory, we may (depending on the strength of the allegation) launch an investigation. As another example, if a product was

present in the market that failed to comply with a children's product safety rule, yet is supported by a certificate based on a CPSC-accepted laboratory's passing test result, we may investigate whether the laboratory is, in fact, conducting tests according to a CPSC-required test method. Under proposed § 1112.51(a)(4), we would provide written notice to a laboratory upon commencement of an investigation.

Section 1112.45(a) would state that we may suspend our acceptance of a laboratory's accreditation for any portion of its CPSC scope when the laboratory fails to cooperate with an investigation under section 14 of the CPSA. The proposed rule would state further that a third party conformity assessment body ''fails to cooperate'' when it does not respond to CPSC inquiries or requests, or responds in a manner that is unresponsive, evasive, deceptive, or substantially incomplete, or when the laboratory fails to cooperate with an investigatory inspection under proposed § 1112.27.

If we determine that a laboratory is not cooperating with an investigation, under proposed § 1112.51(b), we would provide an initial notice of adverse action to the laboratory. This initial notice would state that the CPSC proposes to suspend the laboratory, and it would specify the actions the laboratory would need to take to avoid suspension. Proposed § 1112.45(b) would state that suspension will last until the laboratory complies, to our satisfaction, with required actions, as outlined in the initial notice described in proposed § 1112.51(b), or until we withdraw our acceptance of the laboratory.

Proposed § 1112.45(c) would provide that we will lift the suspension of CPSC acceptance if we determine that the third party conformity assessment body is cooperating sufficiently with the investigation. The suspension would lift as of the date of our written notification to the laboratory, which may be by electronic mail, indicating that we are lifting the suspension.

4. Proposed § 1112.47—What are the grounds for withdrawal of CPSC acceptance?

Proposed § 1112.47 would establish the grounds upon which we may withdraw acceptance of the accreditation of a third party conformity assessment body for any portion of its CPSC scope.

The first ground for withdrawal would be that a manufacturer, private labeler, governmental entity, or other interested party has exerted undue influence on such conformity assessment body, or otherwise interfered with, or compromised, the integrity of the testing process. Proposed § 1112.3 would define ''undue influence'' to mean that a manufacturer, private labeler, governmental entity, or other interested party affects a third party conformity assessment body, such that commercial, financial, or other pressures compromise the integrity of its testing processes or results. Undue influence can take many forms. For example, it would be undue influence if a laboratory director instructs laboratory personnel to alter a test report to indicate a passing result, rather than a failing result, because a customer has exerted pressure on the laboratory director by threatening to withdraw its business if the laboratory report indicates a failing result. Another example of undue influence would be if a manager of a firewalled laboratory asks a laboratory technician not to report a failing test result because it would delay a large shipment of products. Similarly, in the case of a firewalled laboratory, a manufacturing manager who urges the laboratory to complete the testing promptly and ''cut corners'' on the normal testing procedures so that the factory can ship product to meet a production quota for the month, would be attempting to apply undue influence. In the governmental laboratory context, undue influence might take the form of a government official influencing a laboratory to report falsely that a sample passed a test in order to facilitate exports.

The second ground for withdrawal, at proposed § 1112.47(b), would be that the third party conformity assessment body failed to comply with an applicable protocol, standard, or requirement under proposed subpart C of this part. This provision implements section 14(e)(1)(B) of the CPSA.

The third ground for withdrawal, at proposed § 1112.47(c), would state that we may withdraw our acceptance of the accreditation of a laboratory if the laboratory fails to comply with any provision in subpart B of this part. As a reminder, proposed subpart B would establish the general requirements pertaining to third party conformity assessment bodies, such as requirements, processes, and timing related to applying for CPSC acceptance, recordkeeping requirements, and limitations on subcontracting. Thus, examples of failure to comply with subpart B would include a laboratory that loses its ISO/IEC 17025:2005 accreditation (either for the entire laboratory or for any portion of its CPSC scope) or has such accreditation suspended; a firewalled laboratory that fails to continue to satisfy the relevant statutory criteria; or a laboratory that fails to use, in relation to a test conducted for purposes of section 14 of the CPSA, a CPSC-specified test method.

5. Proposed § 1112.49—How may a person submit information alleging grounds for adverse action, and what information should be submitted?

Proposed § 1112.49(a) would allow any person to submit information alleging that one or more of the grounds for adverse action exists. The information may be submitted in writing or electronically. Any request for confidentiality would need to be indicated clearly in the submission.

Proposed § 1112.49(a) also would list the information to be included in a submission alleging grounds for adverse action. First, the submission should include the name and contact information of the person making the allegation. Second, the submission should identify the laboratory against whom the allegation is being made, as well as any officials or employees of the laboratory relevant to the allegation, in addition to contact information for those individuals. Third, a person alleging a ground for adverse action should identify any manufacturers, distributors, importers, private labelers, or governmental entities relevant to the allegation, along with any officials or employees of the manufacturers, distributors, importers, private labelers, and/or governmental entities relevant to the allegation, as well as contact information for those individuals. Fourth, a submission should include a description of acts and/or omissions to support each asserted ground for adverse action. Generally, the submission should describe, in detail, the basis for the allegation that grounds for adverse action against a laboratory exists. In addition to a description of the acts and omissions and their significance, a description may include: dates, times, persons, companies, governmental entities, locations, products, tests, test results, equipment, supplies, frequency of occurrence, and negative outcomes. When possible, the submission should attach documents, records, photographs, correspondence, notes, electronic mails, or any other information that supports the basis for the allegations. Finally, a submission of grounds for adverse action should include a description of the impact of the acts and/or omissions, where known.

Proposed § 1112.49(b) would state that, upon receiving the information, we

would review the information to determine if it is sufficient to warrant an investigation. We may deem the information insufficient to warrant an investigation if the information fails to address adequately the categories of information outlined in paragraph (a) of this section.

6. Proposed § 1112.51—What are the procedures relevant to adverse actions?

Proposed § 1112.51 would describe the process by which we may deny an application from a laboratory, suspend our acceptance of the accreditation of a laboratory, withdraw our acceptance of the accreditation of a laboratory on a temporary or permanent basis; and/or immediately temporarily withdraw our acceptance of the accreditation of a laboratory.

Proposed § 1112.51(a)(1) would state that investigations, for purposes of part 1112, are investigations into grounds for an adverse action against a third party conformity assessment body. Proposed § 1112.51(a)(2) would explain that we would use our *Procedures for Investigations, Inspections, and Inquiries,* 16 CFR part 1118, subpart A, to investigate under this part.

Proposed § 1112.51(a)(3) would provide that an investigation under this part may include: any act we may take to verify the accuracy, veracity, and/or completeness of information received in connection with an application for acceptance of accreditation; a submission alleging grounds for an adverse action; or any other information we receive, which relates to a laboratory's ability to become or remain a CPSC-accepted laboratory.

Proposed § 1112.51(a)(4) would state that we would begin an investigation by providing written notice, which may be electronic, to the laboratory. The notice would inform the laboratory that we have received information sufficient to warrant an investigation, and it would describe the information received by the CPSC, as well as describe our investigative process. The notice also would inform the laboratory that failure to cooperate with a CPSC investigation is grounds for suspension.

Proposed § 1112.51(a)(5) would state that any notice sent by the CPSC under proposed § 1112.35(b)(3) informing the third party conformity assessment body that it must submit a CPSC Form 223 for audit purposes, constitutes a notice of investigation for purposes of this section. The examination portion of an audit under § 1112.33(c) of this part (which we have finalized elsewhere in this issue of the **Federal Register**) constitutes an investigation for purposes of this section.

Failure to cooperate in an investigation under this part is grounds for the CPSC to suspend its acceptance of the accreditation of a laboratory under proposed § 1112.45. In addition, we note that section 19(a)(13) of the CPSA makes it unlawful for any person to make a material misrepresentation to an officer or employee of the Commission in the course of an investigation.

Proposed § 1112.51(b) would state that if, after investigation, we determine that grounds for adverse action exist, and we propose to take an adverse action against a laboratory, we would notify the laboratory, in writing, which may be electronic, about the proposed adverse action. If the proposed adverse action is suspension or withdrawal, the CPSC's notice formally would begin a proceeding to suspend or withdraw our acceptance of its accreditation, as described in section 14(e) of the CPSA. The notice would contain the CPSC's proposed adverse action; specify grounds on which the proposed adverse action is based; and provide findings of fact to support the proposed adverse action. This notice also would contain, when appropriate, specific actions a third party conformity assessment body must take to avoid an adverse action. For example, if a laboratory submitted an incomplete application, we would notify the laboratory of the deficiencies that the laboratory would need to remedy to avoid denial of the application. Also, when the proposed adverse action is withdrawal, the notice would contain consideration of the criteria set forth in proposed § 1112.51(d)(1).

The notice in proposed § 1112.51(b) also would contain the time period by which a laboratory has to respond to the notice. In general, the notice would inform the laboratory that it has 30 calendar days to respond. A laboratory may request an extension of the response time, but it must explain why such an extension is warranted and indicate the amount of additional time needed for a response. Finally, the notice would state that, except under proposed § 1112.53 (which we discuss below in section IV.D.7 of this preamble), a CPSC-accepted laboratory would be able to continue to conduct tests for purposes of section 14 of the CPSA until a Final Notice of adverse action is issued.

Proposed § 1112.51(c) would address how the laboratory may respond to the initial notice. The proposed rule would require the laboratory's response to be in writing, which may be by electronic mail, and in English.

Responses contemplated under proposed § 1112.51(c) could include, but would not be limited to, an explanation or refutation of material facts upon which the CPSC's proposed action is based, supported by documents or a sworn affidavit; results of any internal review of the matter, and action(s) taken as a result; or a detailed plan and schedule for an internal review. Proposed § 1112.51(c) would explain that the response is the laboratory's opportunity to state its case that the ground(s) for adverse action does not exist, or explain why the CPSC should not pursue the proposed adverse action, or any portion of the proposed adverse action. If a laboratory responds to the notice in a timely manner, we would review the response, and, if necessary, conduct further investigation to explore or resolve issues bearing on whether grounds exist for adverse action, and the nature and scope of the proposed adverse action. If a laboratory does not submit a response to the notice in a timely manner, we would be able to proceed to a Final Notice, as described in proposed § 1112.51(e), without further delay.

Proposed § 1112.51(d) would address the adverse action proceeding. Proposed § 1112.51(d)(1) would reiterate the factors that we must consider in any proceeding to withdraw under section 14(e)(2)(A) of the CPSA. The proposed rule would state that we will consider the gravity of the laboratory's action or failure to act, including: Whether the action or failure to act resulted in injury, death, or the risk of injury or death; whether the action or failure to act constitutes an isolated incident or represents a pattern or practice; and whether and when the third party conformity assessment body initiated remedial action.

Proposed § 1112.51(d)(2) would state that, in all cases, we would review and take under advisement, the response provided by the third party conformity assessment body. Except for cases under proposed § 1112.51(d)(3), we would determine what action is appropriate under the circumstances. Proposed § 1112.51(d)(3) would clarify that any suspension or withdrawal of a firewalled laboratory would occur by order of the Commission. We consider this provision to be consistent with section 14(f)(2)(D) of the CPSA and its requirement that the accreditation of a firewalled laboratory may be accepted by Commission order only.

Proposed § 1112.51(d)(4) would reiterate section 14(e)(2)(B)(i) of the CPSA, and would state that the CPSC may withdraw its acceptance of the accreditation of a laboratory on a

permanent or temporary basis. Proposed § 1112.51(d)(5) would reiterate section 14(e)(2)(B)(ii) of the CPSA and would state that, if we withdraw our acceptance of the accreditation of a laboratory, we may establish requirements for the reacceptance of the laboratory's accreditation. Any such requirements would be related to the reason(s) for the withdrawal.

Proposed § 1112.51(e) would detail the Final Notice. If, after reviewing a laboratory's response to a notice, and conducting additional investigation, where necessary, we determine that grounds for adverse action exist, we would send a Final Notice to the laboratory, in writing, which may be electronic. The Final Notice would state the adverse action that we are taking, the specific grounds on which the adverse action is based, and the findings of fact that support the adverse action. When the adverse action is withdrawal, the Final Notice would address the consideration of the criteria as set forth in proposed § 1112.51(d)(1) and would state whether the withdrawal is temporary or permanent, and, if the withdrawal is temporary, the duration of the withdrawal. The Final Notice would inform the laboratory that its accreditation is no longer accepted by the CPSC as of the date of the Final Notice of denial, suspension, or withdrawal for any specified portion(s) of its CPSC scope. The Final Notice also would inform the laboratory that the CPSC Web site will be updated to reflect adverse actions taken against a previously CPSC-accepted laboratory. Finally, the Final Notice would inform the laboratory whether it may submit a new application.

Proposed § 1112.51(f) would state that, upon receipt of a Final Notice, a third party conformity assessment body, as applicable, may submit a new application (if the Final Notice indicated such) or file an Administrative Appeal.

Proposed § 1112.51(g) would address Administrative Appeals. Except for cases covered in proposed § 1112.51(g)(2), a laboratory could file an Administrative Appeal with the Office of the Executive Director. The Administrative Appeal would need to be sent by mail within 30 calendar days of the date on the Final Notice; proposed § 1112.51(g) would provide the appropriate mailing and electronic mail addresses. The proposed rule would require all appeals to be in English; to explain the nature and scope of the issues appealed from in the Final Notice; and describe, in detail, the reasons why the laboratory believes that no grounds for adverse action exist.

The Executive Director would issue a Final Decision within 60 calendar days of receipt of an Administrative Appeal. If the Executive Director's Final Decision would require more than 60 calendar days, he or she would notify the third party conformity assessment body that more time is required, state the reason(s) why more time is required, and, if feasible, include an estimated date for a Final Decision to issue.

Proposed § 1112.51(g)(2) would address the circumstance in which the Commission has suspended or withdrawn its acceptance of the accreditation of a firewalled laboratory. Because suspensions and withdrawals of firewalled laboratories must occur by order of the Commission, Administrative Appeals, in these cases, would be filed with the Commission. The Administrative Appeal would need to be sent to the Office of the Secretary by mail within 30 calendar days of the date on the Final Notice. The proposed rule would require all appeals to be in English, to explain the nature of the issues appealed in the Final Notice, and to describe in detail the reasons why the laboratory believes that no ground(s) exist for adverse action.

7. Proposed § 1112.53—Can the CPSC immediately withdraw its acceptance of the accreditation of a third party conformity assessment body?

Under proposed § 1112.51(b)(7) a CPSC-accepted third party conformity assessment body generally would be able to continue to conduct tests for purposes of section 14 of the CPSA during an investigation and the procedures leading up to an adverse action, until a Final Notice of adverse action is issued. Proposed § 1112.53 would establish a means of immediately and temporarily withdrawing the accreditation of a laboratory in the rare circumstance that it would be in the public interest to remove our acceptance of the laboratory while we pursue an investigation and potential adverse action against the laboratory under proposed § 1112.51.

Section 12 of the CPSA addresses imminent hazards. Proposed § 1112.53 would use section 12 of the CPSA as a guide. We do not foresee many circumstances under which we would be so concerned with the testing conducted by a CPSC-accepted laboratory that we would need to stop the laboratory from conducting third party tests of children's products while we investigate and proceed against the laboratory. However, because any such circumstances would endanger the public, the proposed rule would enable us to do exactly that in certain prescribed conditions and after following particular procedures.

Proposed § 1112.53(a) would state that, when it is in the public interest to protect health and safety, and notwithstanding any other provision of this part, we would be able to immediately and temporarily withdraw our acceptance of a laboratory's accreditation for any portion of its CPSC scope while we pursue an investigation and potential adverse action. Proposed § 1112.53(a)(1) would define ''in the public interest to protect health and safety'' to mean that the CPSC has credible evidence that: (1) The integrity of test(s) being conducted under a scope for which we have accepted the laboratory's accreditation have been affected by undue influence or otherwise interfered with or compromised; and (2) any portion of a CPSC scope for which we have accepted the laboratory's accreditation involve a product(s) which, if noncompliant with CPSC rules, bans, standards, and/or regulations, constitutes an imminently hazardous consumer product under section 12 of the CPSA.

Proposed § 1112.53(a)(2) would state that, when presented with an allegation that, if credible, would result in immediate and temporary withdrawal of CPSC acceptance of a third party conformity assessment body's accreditation, the investigation and adverse action procedures described in § 1112.51 apply, except that instead of the timeframes described in § 1112.51, the following timeframes would apply when the CPSC pursues immediate and temporary withdrawal: The Initial Notice will generally inform the third party conformity assessment body that it has 7 calendar days to respond; an administrative appeal of a Final Notice of immediate and temporary withdrawal will be timely if filed within 7 calendar days of the date of the Final Notice.

Proposed § 1112.53(b) would state that, if the laboratory is already the subject of an investigation or adverse action process, the immediate and temporary withdrawal would remain in effect until either we communicate in writing that the immediate and temporary withdrawal has been lifted, the investigation concludes and we do not propose an adverse action, or the adverse action process concludes with denial, suspension, or withdrawal. Under proposed § 1112.53(c), if the laboratory is not already the subject of an investigation or adverse action process under § 1112.51, an investigation under § 1112.51(a) would be launched based on the same information that justified the immediate and temporary withdrawal.

8. Proposed § 1112.55—Will the CPSC publish adverse actions?

Proposed § 1112.55 would state that, immediately following a final adverse action, we would be able to publish the fact of a final adverse action, the text of a final adverse action, or a summary of the substance of a final adverse action. In addition, after issuance of a final adverse action, we would amend our Web site listing of CPSC-accepted laboratories to reflect the nature and scope of such adverse action.

E. Proposed § 1118.2—Conduct and Scope of Inspections

The Commission's regulations on investigations, inspections, and inquiries under the CPSA are located at 16 CFR part 1118. Subpart A of part 1118 prescribes CPSC procedures for investigations, inspections, and inquiries. Section 1118.2 addresses topics such as how the CPSC conducts an inspection, which sites the CPSC has authority to inspect, and what the CPSC may view or obtain during an inspection.

The proposed rule would amend § 1118.2(a) in two ways. First, it would include firewalled third party conformity assessment bodies as entities that we may inspect. This amendment is necessary to conform § 1118.2(a) with the statutory language in section 16(a) of the CPSA and the inspection provision at proposed § 1112.27. Second, it would remove the word ''consumer'' before the word ''product'' throughout paragraph (a), for accuracy. Some children's products regulated by the Commission and that are required by the CPSA to be third party tested are not regulated primarily under the CPSA. For example, some toys are regulated under the Federal Hazardous Substances Act, 15 U.S.C. 1261–1278. To be consistent with the inspection provision at proposed § 1112.27, the references to ''product'' must be broad enough to include more than just products subject to CPSA safety standards.

Normally, we would use the plain language ''must'' rather than ''shall'' when describing mandatory requirements in a rule. However, because we are amending one paragraph of a section that was drafted using ''shall,'' we will continue to use ''shall'' in this paragraph, to avoid any potential confusion that might arise from the appearance of inconsistent terminology within § 1118.2.

V. Regulatory Flexibility Act

A. Introduction

The Regulatory Flexibility Act (RFA), 5 U.S.C. chapter 6, requires the agency to evaluate the economic impact of this proposed rule on small entities. The RFA defines ''small entities'' to include small businesses, small organizations, and small governmental jurisdictions. Section 603 of the RFA requires the CPSC to prepare an initial regulatory flexibility analysis and make it available to the public for comment when the notice of proposed rulemaking is published. The initial regulatory flexibility analysis must describe the impact of the proposed rule on small entities and identify any alternatives that may reduce the impact. Specifically, the initial regulatory flexibility analysis must contain:

1. [A] description of the reasons why action by the agency is being considered;
2. [A] succinct statement of the objectives of, and legal basis for, the proposed rule;
3. [A] description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
4. [A] description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities subject to the requirements and the type of professional skills necessary for the preparation of reports or records;
5. [A]n identification, to the extent possible, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.

5 U.S.C. 603(b).

Additionally, the initial regulatory flexibility analysis must contain a description of any significant alternatives to the proposed rule that accomplish the stated objectives of the proposed rule while minimizing the economic impact on small entities.

B. Reasons the Commission is Considering the Proposed Rule

Section 14(a)(2)of the CPSA requires that a manufacturer or private labeler of a children's product subject to a children's product safety rule submit samples of the product to a CPSC-accepted third party conformity assessment body for testing for compliance with the rule. Based on the testing, the manufacturer or private labeler must issue a certificate that certifies that the children's product complies with the applicable children's product safety rule(s). This proposed rule would codify, inter alia, the requirements and process by which a laboratory may apply for CPSC acceptance of its accreditation, the process for a laboratory to voluntarily discontinue providing testing to support a children's product certification, and the procedures by which the CPSC may suspend or withdraw its acceptance of the accreditation of a laboratory.

C. Objectives of and Legal Basis for the Proposed Rule

The primary objective of the proposed rule is to codify the requirements pertaining to laboratories, including the requirements and processes related to obtaining CPSC acceptance of their accreditation. Codifying the requirements related to obtaining CPSC acceptance of accreditation will make it easier for interested parties to locate the requirements because, from September 2008 through August 2011, the CPSC has issued 19 notices of requirements pertaining to specific regulations or test methods. This rule would compile the requirements in a single location.

The proposed rule also would establish the grounds for and procedures by which the CPSC could suspend or withdraw its acceptance of the accreditation of a laboratory. Additionally, where the required test method(s) is not specified in a children's product safety rule, provisions in the proposed rule (§ 1112.15, § 1112.17) would formally establish the test method(s) that laboratories must use to assess conformity with the particular rule.

The legal bases of the rule are found in section 14 of the CPSA, as amended by section 102 of the CPSIA, and section 3 of the CPSIA. Section 3 of the CPSIA grants the CPSC the authority to issue regulations to implement the CPSIA and the amendments made by the CPSIA. Section 14(a)(3) of the CPSA provides the authority for the CPSC to establish the accreditation requirements for laboratories. Section 14(e) of the CPSA provides the authority for the CPSC to suspend and/or withdraw the acceptance of the accreditation of a laboratory.

D. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

This proposed rule would apply to laboratories that intend to offer their testing services to manufacturers and private labelers of children's products for purposes of supporting a certification that the products conform to applicable children's product safety rules. The proposed rule would not impose any requirements on laboratories that do not intend to provide these services.

Although there are 5,041 firms classified as ''testing laboratories'' (NAICS code 54138) in the United States,[2] only a small subset of these

[2] Based on 2007 data from the U.S. Census Bureau that was compiled by the U.S. Small Business

Continued

laboratories are expected to provide third party conformity assessments of children's products for purposes of section 14(a)(2)of the CPSA. As of August 29, 2011, the CPSC has accepted the accreditation of 87 laboratories located in the United States.[3] This number could increase somewhat over the next year or so as the remaining notices of requirements for accreditation are issued and the stays of enforcement of the requirements for third party testing that the Commission issued pending clarification of the regulations and testing requirements, are lifted. Of the laboratories located in the United States with CPSC-accepted accreditations, 12 are owned by large, foreign-based companies and 22 are large, U.S.-based companies. The remaining 53 laboratories (about 61 percent) could be small firms, according to the criteria established by the U.S. Small Business Administration (SBA), which for a laboratory is revenue of less than $12 million annually.

E. Projected Reporting, Recordkeeping, and Other Compliance Requirements

1. Accreditation Requirements

The proposed rule would establish the requirements for CPSC acceptance of the accreditation of a laboratory. The rule would apply only to laboratories that intend to provide third party testing of children's products in support of the certification required by section 14(a)(2) of the CPSA. The proposed rule would not impose any requirements on laboratories that do not intend to provide these services.

The proposed rule would require that, as a condition of CPSC acceptance of its accreditation, the laboratory must be accredited to the Standard ISO/IEC 17025:2005, ''General Requirements for the Competence of Testing and Calibration Laboratories.'' The accreditation must be by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation—Mutual Recognition Arrangement (ILAC–MRA). The scope of the accreditation must list the CPSC safety rule(s) and/or test method(s) for which acceptance is sought. This aspect of the proposed rule would simply codify the existing conditions for CPSC acceptance of accreditation, which have been stated in every notice of requirements published by the CPSC.

The proposed rule would require that laboratories provide the CPSC with their accreditation certificate and scope documents. These records are normally generated during the accreditation process and can be provided to the CPSC electronically. The application form for the CPSC acceptance of accreditation is CPSC Form 223. This is an electronic application form and all of the information that is required to be supplied on the form should be readily available to the laboratory. The professional skills required to complete CPSC Form 223 and the related documents are skills that a competent, accredited laboratory would be expected to have.

The proposed rule also would require firewalled laboratories to submit additional materials. The additional documents would provide evidence that, despite the fact that the laboratory is managed, owned, or controlled by a manufacturer or private labeler, the testing process is independent of that relationship. The acceptance of a firewalled laboratory's accreditation would occur only by Commission order after it has made certain findings. The additional documents required to support the findings include:

- The laboratory's policies and procedures that explain:
  - How the third party conformity assessment body will protect its test results from undue influence by the manufacturer, private labeler, or other interested party;
  - That the CPSC will be notified immediately of any attempt by the manufacturer, private labeler, or other interested party to hide or exert undue influence over the third party conformity assessment body's test results; and
  - That allegations of undue influence may be reported confidentially to the CPSC;
- Training documents, including a description of the training program content, showing how employees are trained annually on the policies and procedures described above.
- Training records listing the staff members who received the required training. The records must include training dates, location, and the name and title of the individual providing the training;
- An organizational chart(s) of the laboratory that includes the names of all laboratory personnel, both temporary and permanent, and their reporting relationship within the laboratory;
- An organizational chart(s) of the broader organization that identifies the reporting relationships of the laboratory within the broader organization (using both position titles and staff names); and
- A list of all laboratory personnel with reporting relationships outside of the laboratory. The list must identify the name and title of the relevant laboratory employee(s) and the names, titles, and employer(s) of all individuals outside of the laboratory to whom they report.

The proposed rule also would establish requirements for CPSC acceptance of the accreditation of laboratories that are owned or controlled by a government. The additional requirements for this type of laboratory include a description, which may be in the form of a diagram, that illustrates relationships with other entities, such as government agencies and joint venture partners, and answering questions that will be used by the CPSC to determine whether it meets the statutory requirements for acceptance of its accreditation. The laboratory must also provide a copy of an executed memorandum addressed to all staff members and displayed for staff reference stating the laboratory policy to reject undue influence over its testing results by any outside person or entity. The memorandum must add that employees are required to report immediately to their supervisor or other designated official about any attempts to gain undue influence and that the laboratory will not tolerate violations of its undue influence policy. Further, a senior officer of the laboratory must make attestations regarding the continuing accuracy of the conditions and policies of the laboratory.

Laboratories that are owned by foreign governments do not meet the definition of a ''small entity'' under the Regulatory Flexibility Act. To date, we have accepted one application from a domestic governmental laboratory.

There are no fees payable to the CPSC associated with applying for CPSC acceptance of accreditation. The costs of obtaining ISO/IEC 17025:2005 accreditation by a signatory to the ILAC–MRA typically include a one-time application fee, an annual fee for each field in which the laboratory is accredited, and an assessment fee. These charges will vary somewhat among accreditation bodies; but representative charges, based on the published fee schedule of one accreditation body, are $800 for the initial application fee, $1,300 per field for the annual fee, and $135 per hour per assessor. A representative of an accreditation body stated that assessments can take from 1 to 5 days, with 2.5 days being about average.

Based on the above discussion, a laboratory seeking accreditation in one field of testing can expect to pay around $4,800 in fees. The cost could be higher if the assessment takes more than 2.5 days. If the laboratory is seeking accreditation in more than one field, such as chemical and mechanical

Administration (available at *http://www.sba.gov/advo/research/us_rec07.txt*).

[3] CPSC has recognized the accreditations of at least 346 (if using the date of Aug 17, 2011) testing laboratories worldwide. However, most of the laboratories are located in other countries. Only domestic firms are relevant for purposes of the RFA.

testing, the cost will be higher because there will be additional fees for each field, and the assessment will likely take more time. In addition, the laboratory can be expected to be charged for the cost of the assessor's travel, lodging, and meals while conducting the assessment. There will be some cost to the laboratory in terms of personnel to prepare documents for the assessment and to work with the assessors during the assessment.

If a laboratory is already accredited to ISO/IEC 17025:2005 by an accreditation body that is a signatory to the ILAC–MRA, and the laboratory is simply seeking to expand its scope of accreditation to include specific CPSC tests, the cost to the laboratory will be substantially less. In some cases, if the laboratory's scope already includes closely related tests, the accreditation body might be willing to add the CPSC tests to the scope without additional charges. In other cases, there could be some administrative or assessment charges, but these would be less than would be required for a full initial assessment.

For most product safety rules, the required test methods were specified in the regulation that established the safety rule. However, in the case of the requirements limiting the lead content of children's products, the test methods have been specified in the notices of requirements for accreditation, because the limits on acceptable lead were established in law via the CPSIA. The proposed rule would expand the list of acceptable test methods for measuring lead content to include the use of XRF for measuring the lead content of glass materials, crystals, and certain metals. Because XRF can be significantly less expensive than other approved test methods, such as inductively coupled plasma or atomic absorption spectrometry, this provision could lower the laboratories testing costs. Some or all of the cost reductions could be passed onto the consumer product manufacturers in the form of lower testing prices.

ISO/IEC 17025:2005 has requirements for the periodic reassessment of accredited laboratories. We are addressing these requirements in the separate but related rulemaking on periodic audits.

2. Recordkeeping Requirements

The proposed rule would require that laboratories maintain certain records associated with the testing conducted for purposes of section 14(a)(2) of the CPSA for at least five years. The retention requirement would apply to all test reports and technical records, records related to subcontracted tests, and customer reports, if different from the test record, if related to tests conducted for purposes of section 14(a)(2) of the CPSA. Additionally, all internal documents describing testing protocols and procedures (such as instructions, standards, manuals, guides, and reference data) that have applied to a test conducted for purposes of section 14(a)(2)of the CPSA must be retained for a period of at least five years from the date such test was conducted. Upon a request by the CPSC, the laboratory must make the records available to the CPSC within 48 hours. If the records are not in English, the proposed rule would require that the laboratory provide the CPSC with copies of the non-English record available to the CPSC within 48 hours, and the laboratory must make an English translation available within 30 days of a request to do so. All records must be legible, but they can be in electronic format or hardcopy, so long as they are readily retrievable.

3. Grounds and Procedures for Adverse Actions Against CPSC-Accepted Laboratories

The proposed rule also would establish the grounds and procedures that the CPSC would use to take adverse actions against a laboratory. Adverse actions would include: Denying the acceptance of the laboratory's accreditation, suspending the acceptance of the laboratory's accreditation for a period of time, or withdrawing the acceptance of the laboratory's accreditation on a temporary or permanent basis. Grounds for these adverse actions would include: A failure to comply with CPSC requirements, failure to cooperate with the CPSC during an investigation, and allowing a manufacturer or other party to exert undue influence on the testing process. Among other things, the rule would establish the requirements for the notices that the CPSC must provide a laboratory before taking an adverse action, the time limits for responses by the laboratory to the notice, and the laboratory's appeal rights.

During an investigation of an allegation, some costs would be incurred by the laboratory for things such as making employees available for interviews with CPSC investigators, providing the CPSC with documents or records requested by the investigators, and allowing CPSC investigators access to its facilities. The cost incurred would depend upon the scope of the investigation. If the CPSC proposed an adverse action against the laboratory, the laboratory could incur some cost in preparing a reply to the notice, if it chooses to reply. The number of investigations of laboratories that the CPSC will open is not known.

4. Summary

Laboratories that intend to provide third party testing services for purposes of section 14(a)(2) of the CPSA will incur some costs to obtain CPSC acceptance of their accreditation. The costs would be low for laboratories that are already accredited to ISO/IEC 17025:2005 by a body that is an ILAC–MRA signatory. If the laboratory is not already accredited to ISO/IEC 17025:2005 by an ILAC–MRA signatory, it can expect to incur fees of around $4,800. The fees could be higher if the laboratory sought accreditation in more than one field of testing or the assessment took more than 2.5 days. If the CPSC opened an investigation of the laboratory, the laboratory would likely incur some costs in connection with the investigation.

As noted, the requirements in this proposed rule would apply only to those laboratories that intend to provide third party testing services for purposes of section 14(a)(2) of the CPSA. The only laboratories that are expected to provide those services are those that expect to receive sufficient revenue from providing the testing to justify accepting the requirements as a business decision. Laboratories that do not expect to receive sufficient revenue from these services to justify accepting these requirements would not be expected to pursue accreditation for this purpose. Therefore, one would not expect the requirements to have a significant adverse impact on a substantial number of laboratories.

F. Federal Rules That Duplicate, Overlap, or Conflict With the Proposed Rule

We have not identified any federal rules that duplicate, overlap, or conflict with the proposed rule.

G. Significant Alternatives Considered

The RFA directs agencies to describe significant alternatives to the proposed rule that would minimize the significant economic impacts on small entities, while accomplishing the agency's objectives. We considered two alternatives to provisions in the proposed rule. One alternative was for the CPSC to accept the accreditation of laboratories that had been accredited by bodies other than just those that are signatories to the ILAC–MRA. The second alternative involved accepting XRF test methods for determining lead

content in paint, children's metal jewelry, and children's metal products.

1. Accepting Accreditations by Bodies That Are Not ILAC–MRA Signatories

Comments were received in response to several notices of requirements that the CPSC should accept the accreditation of laboratories that had been accredited by organizations or accreditation bodies that are not signatories to the ILAC–MRA. Some of the organizations not affiliated with the ILAC–MRA, that were suggested by commenters, are the American Industrial Hygiene Association (AIHA), the National Lead Laboratory Accreditation Program (NLLAP), the National Environmental Laboratory Accreditation Conference (NELAC), and accreditation bodies that are members of the National Cooperation for Laboratory Accreditation (NACLA).

If we accepted the accreditation of laboratories that were accredited by these other organizations, it would reduce the cost of obtaining CPSC acceptance for those laboratories that are accredited by the non- ILAC–MRA bodies. Under the proposed rule, to gain CPSC acceptance of their accreditation, these laboratories would have to seek additional accreditation by a body that is a signatory to the ILAC–MRA. It is not known how many laboratories that are accredited by nonsignatories to the ILAC–MRA intend to offer conformity assessment testing services to manufacturers or private labelers of children's products for purposes of section 14(a)(2) of the CPSA.

We recognize that there are other laboratory accreditation organizations or accreditation body cooperations, and we realize that some of these organizations may adhere to similar rules and standards (but with some distinctions) as those established in the ILAC–MRA signatory program. However, CPSC designations to such organizations would not meet all of the objectives we had when we established, as a baseline accreditation requirement, accreditation by a body that was a signatory to the ILAC–MRA. Moreover, we sought to designate a program that operated and was accepted on a broad, multinational level and that could immediately bring on board a large number of accreditation bodies and avoid designating accreditation programs or entities that were recognized only in specific regions, nations, or localities. In the absence of establishing conditions for accreditation bodies, any person or entity can claim to be able to accredit laboratories to ISO/IEC 17025:2005, regardless of their qualifications to do so. It should also be noted that the AIHA, one of the suggested alternative accreditation bodies, is now a signatory to the ILAC–MRA.

2. Alternative Test Methods for Lead

The CPSC has received a number of requests to allow more extensive use of XRF analysis in testing related to lead because XRF analysis is significantly less expensive than the other test methods for lead content.

Based on its continuing research of testing methodologies, the Commission has approved the use of certain XRF methods for determining the lead content of homogenous polymer components and paints, and the proposed rule would allow, in addition, the use of certain XRF methods for determining the lead content of glass materials, crystals, and certain metals. However, for other materials, CPSC staff has not determined that XRF is as effective, precise, and reliable as the approved methods. Therefore, the proposed rule does not expand the approved use of XRF to cover all materials or substances. We continue to evaluate improvements in technology and methods on an ongoing basis.

3. Other Potential Alternatives

The RFA directs agencies to consider some specific alternatives to a proposed rule including:

1. The establishment of different compliance or reporting requirements for small entities or timetables that take into account the resources available to small entities;
2. Clarification, consolidation, or simplification of compliance and reporting requirements for small entities;
3. Use of performance rather than design standards; and
4. Exemption for certain or all small entities from coverage of the rule, in whole or part.

Other than the alternatives specifically discussed above (regarding accreditation by bodies that are not signatories to the ILAC–MRA and alternative testing methods for lead content), we did not identify any significant alternatives that also would meet the agency's objectives and fulfill its obligations under the CPSA, as amended by the CPSIA. However, we welcome comments suggesting other alternatives that could reduce the burden on small entities, while fulfilling the agency's objectives.

VI. Paperwork Reduction Act

This proposed rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA). We describe the provisions in this section of the document with an estimate of the annual reporting burden. Our estimate includes the time for completing the application to become a CPSC-accepted laboratory (CPSC Form 223), including uploading the accompanying documents that would be required under this rule; for complying with the proposed recordkeeping requirements; for submitting the information that would be necessary to discontinue voluntarily as a CPSC-accepted laboratory; and for supplying the accompanying documents that would be required at audit.

In particular, we invite comments on the following: (1) Whether the collection of information is necessary for the proper performance of the CPSC's functions, including whether the information will have practical utility; (2) the accuracy of the CPSC's estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to reduce the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Requirements Pertaining to Third Party Conformity Assessment Bodies

Description: The proposed rule would establish the requirements pertaining to the laboratories that are authorized to test children's products in support of the certification required by section 14(a)(2) of the CPSA, as amended by section 102(a) of the CPSIA. The proposed rule would establish the general requirements concerning third party conformity assessment bodies, such as the requirements and procedures for CPSC acceptance of the accreditation of a laboratory, and it also would address adverse actions against CPSC-accepted laboratories. In addition, the proposed rule would amend the audit requirements for laboratories.

Description of Respondents: Testing laboratories.

We estimate the burden of this collection of information as follows: There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimates are based on the following: A laboratory desiring to have its accreditation accepted by the CPSC first must submit an application, CPSC Form 223. CPSC Form 223 is already an OMB-approved collection of information, control number 3041–0143,

which expires on July 31, 2013. In that approved collection, we estimated that it would take respondents (applicant laboratories) one hour to complete the form, which includes uploading the ''baseline documentation'' required of all applicants: the accreditation certificate, and statement of scope.

The proposed rule, if finalized as written, would necessitate changes to CPSC Form 223. For purposes of this PRA estimate, we assume the rule will be finalized as written. To estimate the paperwork burden associated with the application, we are beginning with the 1-hour time estimate already approved under control number 3041–0143, and adding to the one hour estimate, the time we estimate it will take or an applicant laboratory to comply with the application requirements that would be newly imposed as a result of this rule.

The proposed rule would require applicant laboratories to attest to a variety of facts concerning their ownership and legal relationships, to determine whether the laboratory should be considered an applicant for firewalled or governmental status. Each characteristic contained in § 1112.11(b) that indicates a firewalled laboratory, would be reflected in a statement to which an applicant laboratory would need to attest with a ''yes'' or ''no'' answer. Similarly, each characteristic indicating a governmental laboratory, as contained in § 1112.11(c), would be reflected in a statement to which an applicant laboratory would need to attest with a ''yes'' or ''no'' answer. We surveyed less than nine CPSC-accepted laboratories, and we asked them how long it took them to complete the attestation portion of the current CPSC Form 223. The average of the estimates provided was three minutes. This proposed rule would expand significantly the list of characteristics indicating ''governmental'' or ''firewalled'' status, as compared to the current CPSC Form 223. We estimate that the additional attestation requirements will take applicants five times longer than the current attestation section on CPSC Form 223. Accordingly, we estimate that it would take applicants an additional 15 minutes to complete CPSC Form 223. Thus, the total time estimated to comply with proposed § 1112.13(a) is 75 minutes per respondent. Based on our experience with the laboratory program to date, we estimate that there will be a total of 450 laboratories whose accreditations are accepted by the CPSC after an initial period of about four years. To predict the annual burden, we divided the number of laboratories by the initial period, to arrive at an estimated 113 laboratories per year with the 75-minute burden.

Proposed § 1112.13(a)(1) would require CPSC-accepted laboratories to submit a new CPSC Form 223 whenever information previously submitted on the form changes. Based on our experience operating the laboratory program, to date, only about 1 percent of laboratories per year need to update their information, and the information changes, thus far, have been limited to items such as a contact name. A laboratory will not need to fill out an entirely new CPSC Form 223 to submit new information; the laboratory can access its existing CPSC Form 223 via the laboratory application program on the CPSC Web site and change only those elements that are in need of updating. We estimate that it will take a laboratory that needs to update its information 15 minutes to do so.

The proposed rule, at § 1112.13(b)(2), would require applicant firewalled laboratories to submit six documents concerning their relationship to the manufacturer in addition to their policies on undue influence. First, an applicant firewalled laboratory must submit their established policies and procedures addressing undue influence; that the CPSC will be notified immediately if there is an attempt at undue influence; and that allegations of undue influence may be reported confidentially to the CPSC. Because applicant laboratories must be accredited to ISO/IEC 17025:2005, we know that the laboratories already have certain policies and procedures in place concerning undue influence. However, those policies and procedures will not address reporting attempts at undue influence to the CPSC and that such reports to the CPSC may be confidential. Therefore, we estimate that a laboratory will need to amend its policies and procedures to include these CPSC-related topics. Based on our experience with firewalled laboratory applications, to date, we estimate that it will take applicants two hours to develop these additional policies. The experience of CPSC staff working on firewalled laboratory applications indicates that often applicants choose to submit draft amended policies and procedures for feedback prior to finalizing the documents. To err on the side of overestimating, rather than underestimating the burden, we will assume that all firewalled applicants will submit draft documents, and we estimate that applicants will spend an additional hour revising and finalizing those documents after CPSC staff's initial review. Therefore, we estimate that laboratories will spend 3 hours creating these policies and procedures.

In terms of the time it will take an applicant to upload the policies and procedures once they exist, we estimate eight minutes. This estimate is based partly on the results of a survey of fewer than nine laboratories that we asked to estimate the amount of time it took to upload the baseline documents (accreditation certificate and statement of scope). On average, it took an applicant four minutes to locate and upload the two documents. Again, based on our experience with firewalled laboratory applicants, to date, we estimate that the required policies and procedures will be reflected in two documents (*e.g.,* a quality manual and a procedures guide), each of which will take the estimated four minutes to locate and upload into the CPSC laboratory application system. To account for submitting a draft version first, to be followed by a final version, we doubled the 4 minute estimate.

The second submission that the proposed rule would require of firewalled applicants is training documents showing how employees are trained annually on the policies and procedures just described (*see* § 1112.11(b)(2)(i)). Again, laboratories will already have training documents, but those documents will need to be amended to reflect CPSC-related policies (*e.g.,* laboratory staff may report allegations of undue influence confidentially to the CPSC). Following the same reasoning that we applied to laboratories that amend their policies and procedures, we estimate that it will take an applicant firewalled laboratory three hours to create the necessary training documents. Following the same reasoning that we applied to the time it would take to upload the policies and procedures, we estimate that it will take a firewalled laboratory applicant eight minutes to locate and upload the necessary training documents.

The third submission the proposed rule would require firewalled laboratory applicants to furnish training records showing that laboratory staff were trained on the policies and procedures described above (*see* § 1112.11(b)(2)(i)). While we understand that laboratories maintain training records in the normal course of doing business, we acknowledge that it is unlikely that all laboratories routinely maintain records that include all of the elements that would be required under this rule. For example, while some laboratories may have employees sign in at each training, other laboratories may not. As another example, while some laboratories may record who conducted the training,

others may not. To account thoroughly for the burden that would be imposed by this rule, we estimate that it will take each laboratory one hour to create the training records that would be required under this rule; this one hour is intended to account for any detail of the training that a laboratory would record for compliance with this rule that the laboratory otherwise would not record.

In terms of the time it takes to locate and upload the training records, we assume that some laboratories will maintain the requisite information in more than two documents. Based on the survey results described previously, which indicated that it took an average of four minutes for respondents to locate and upload two documents, we estimate that the burden associated with locating and uploading the training documents requirement is four minutes.

The fourth submission required of firewalled laboratory applicants is an organizational chart of the laboratory. We assume that a laboratory will already have such a document, so the time it would take to comply with this requirement merely would be the time it would take to locate and upload the chart. Based on the earlier estimate of four minutes for two documents and because this is only one document, we estimate the burden associated with this requirement to be two minutes.

Similarly, the fifth submission required of firewalled laboratory applicants is an organizational chart of the broader organization, indicating how the laboratory fits into the manufacturing company structure. Again, we assume that the laboratory will already have access to such a document that exists in the normal course of the manufacturer's and laboratory's business. Therefore, the only burden associated with this proposed requirement would be the time it takes for the laboratory to locate and upload the chart. Based on the same reasoning applied for the last organizational chart, we estimate the burden associated with submitting the broader organization's chart to be two minutes.

The sixth submission that would be required of firewalled laboratory applicants is a list of laboratory staff that have reporting relationships outside the laboratory. We assume, for PRA purposes, that this document has not been created in the normal course of the laboratory's business. We do not anticipate that there will be many laboratory employees with outside reporting relationships. Thus, we estimate that this will be a short list. Based on similar lists we have seen from prior firewalled laboratory applicants, we estimate that it will take a laboratory one hour to create this list. Using the same reasoning as applied already, we estimate that it will take a laboratory two minutes to locate and upload this document.

Therefore, based on the above analysis, we estimate that it will take a firewalled laboratory applicant about 8.4 hours to comply with the proposed requirements in § 1112.13(b)(2) (188 min. for policies and procedures + 188 min. for training documents + 64 min. for training records + 2 min. for laboratory organizational chart + 2 min. for broader organizational chart + 62 min. for the list of staff with outside reporting relationship = 506 min.; 506 min./60 min. in each hour = 8.4 hours).

Proposed § 1112.13(c)(2) addresses the four additional application requirements for governmental laboratories. The first requirement would be that a governmental laboratory applicant must submit a description, which may be in the form of a diagram, which illustrates the laboratory's relationships with other entities, such as government agencies and joint ventures. Based on the response from a governmental laboratory whose accreditation is accepted by the CPSC, the time required for this is estimated at one hour.

Second, a governmental laboratory applicant would be required to respond to a questionnaire concerning the criteria for governmental laboratories; the criteria are statutory in origin, but they appear at § 1112.13(c)(1) of the proposed rule. Based on our experience with governmental laboratory applications, to date, we estimate that it takes each applicant one hour to respond to this questionnaire.

Third, proposed § 1112.13(c)(2)(iii) would require a governmental laboratory applicant to submit a copy of an executed memorandum addressing undue influence. Our experience with governmental laboratory applicants suggests that it will take 0.5 hours to complete the memorandum. Therefore, we tentatively assign an estimate of 0.5 hours to complete this task.

Fourth, a senior officer of the governmental laboratory applicant would be required to attest to facts and policies concerning the applicant. Our experience with governmental laboratory applicants suggests that it will take 0.5 hours to complete the attestation. Therefore, we tentatively assign an estimate of 0.5 hours to complete this task.

Therefore, the total time we estimate that it will take for a governmental laboratory applicant to comply with the proposed requirements in § 1112.13(c)(2), is 3 hours (1 hour for the laboratory relationships description + 1 hour for responding to the questionnaire + 0.5 hours to complete the memorandum addressing undue influence + 0.5 hours for the attestation of facts and policies = 3 hours).

Proposed § 1112.25(a) addresses recordkeeping requirements. We would require that laboratories maintain all test reports and technical records related to tests conducted for purposes of section 14 of the CPSA for at least five years. It is our understanding that laboratories maintain these records in the normal course of their business. However, we would also require that when a test conducted for purposes of section 14 of the CPSA is subcontracted, the prime contractor's report must clearly identify which test(s) was performed by a CPSC-accepted laboratory acting as a subcontractor, and the test from the subcontractor must be appended to the prime contractor's report. We assume, for PRA purposes, that those requirements may not be satisfied in the normal course of a laboratory's business. Based upon responses received from laboratories we surveyed, we estimate that on average, a laboratory conducts 10,188 tests for purposes of section 14 of the CPSA annually. Based on our experience with the laboratory program, to date, we estimate that 5 percent of laboratories will subcontract tests to other CPSC-accepted laboratories. It is difficult to estimate exactly how many tests will be subcontracted, but for current purposes, we will estimate that of the laboratories that subcontract, they will subcontract 25 percent of their tests. To comply with the proposed recordkeeping requirements related to subcontracted tests, we estimate that a laboratory will spend five minutes locating and amending a test report to indicate clearly that one of the test(s) supporting the test report has been subcontracted. We estimate that it will take 2 minutes for the laboratory to append the subcontracted report to the main report (either electronically append, or append hard copies of the reports [*e.g.,* staple]). Therefore, we estimate that it will take a laboratory seven minutes to comply with this proposed recordkeeping requirement. Given the number of laboratories that have already been accepted by the CPSC, and based on our experience with the rate of new successful applications, we predict that the total number of laboratories will be 450. Five percent of 450 laboratories is 23 laboratories. Twenty-five percent of 10,188 tests is 2,547 tests. If 23 laboratories subcontract 2,547 tests per

year, that is a total of 58,581 subcontracted tests per year. Seven minutes times 58,581 subcontracted tests produces an estimate of 410,067 minutes, or approximately 6,834 hours per year, to comply with the recordkeeping requirement proposed at § 1112.25(a)(2).

Proposed § 1112.25(a)(3) would require that if a laboratory, after conducting a test, chooses to send a report to the customer different from the laboratory test report, the laboratory must maintain the report sent to the customer for five years. Any report that falls within this requirement would be a report that the laboratory has created in the normal course of its business, and thus, is not part of the burden associated with this proposed rule.

We also would require laboratories to maintain any and all internal documents describing testing protocols and procedures, such as instructions and manuals, for a period of five years. Again, these documents would exist as part of the laboratory's normal business activity so that it would not be part of the burden imposed by this proposed rule.

Proposed § 1112.29(a) would explain that a CPSC-accepted laboratory may voluntarily discontinue its participation with the CPSC at any time, by submitting a written notice to the CPSC, and the proposed rule would detail the information that must be included in the notice. In the three years that we have been operating the laboratory program, six laboratories have voluntarily discontinued their participation with us. To err on the side of overestimating, rather than inaccurately underestimating the burden, we will assume that six laboratories will voluntarily discontinue their participation each year. We propose to require five elements for the voluntary discontinuance notice, including the name of, and contact information for, the laboratory, scope of the discontinuance, and the beginning date of the discontinuance. Based on our experience with the laboratory program, to date, we estimate that it would take a laboratory one hour to prepare and send this notice of discontinuance. Because we estimate that six laboratories per year will submit such a notice, the total annual burden associated with § 1112.29(a) is estimated to be six hours per year.

The last section of this proposed rule that imposes paperwork burdens is a section related to audits. The final audit rule appears elsewhere in this issue of the **Federal Register**. Here, we are proposing to amend the definition of ''audit,'' to include in the definition the requirement that all laboratories submit at audit, whatever accompanying documentation would be required if they were submitting an initial application. Because the CPSC portion of the audit is required no less than once every two years, we estimate that 50 percent of laboratories will go through an audit each year. Based on the number of independent laboratories that have already been accepted by the CPSC and our experience with the rate of new successful applications, we predict that the total number of independent laboratories will be 365. Half of those, or 183 laboratories, will be audited annually. As noted above, based on results from a survey of fewer than nine laboratories, it takes applicants an average of four minutes to locate and upload their accreditation certificate and statement of scope. Therefore, we estimate that independent labs will spend approximately 12.2 hours complying with this proposed amendment annually (183 laboratories × 4 minutes = 732 min. annually; 732 min./60 minutes per hour = 12.2 hours).

With regard to the burden associated with proposed § 1112.13(b)(2), we estimated that it would take a firewalled laboratory applicant 8.4 hours to submit the accompanying documentation required with their initial application for CPSC acceptance. Seven hours of that time was allotted for laboratories to create documents specifically required for testing children's products for purposes of section 14 of the CPSA. The laboratories will not need to create those documents again at audit, however. Therefore, instead of the three hours we estimated that firewalled laboratories would spend developing the policies and procedures that would be required under § 1112.13(b)(2)(i), we estimate, for audit purposes, that laboratories will spend one hour reviewing and updating those policies and procedures. Similarly, instead of the three hours we projected that laboratories would need for developing the training documents under § 1112.13(b)(2)(ii), we estimate that laboratories will spend one hour reviewing and updating those documents at audit. Instead of the one hour we estimated laboratories would spend creating the list of employees with outside relationships that would be required under § 1112.13(b)(2)(vi), we estimate laboratories will spend 20 minutes reviewing and updating that list at audit. Accordingly, instead of the 506 minutes we estimated that a firewalled laboratory would spend in support of submitting the accompanying documentation at the time of their initial application for CPSC acceptance, we estimate that a laboratory will spend 226 minutes in support of submitting the accompanying documentation at audit (506 min. − 120 min. for policies and procedures − 120 min. for training documents − 40 min. for list of employees and outside interests = 226 min.). Based on the number of firewalled laboratories that have already been accepted by the CPSC and our experience with the rate of new successful applications, we predict that the total number of firewalled laboratories will be 35. Half of those, or 18, will be audited annually. If half of the firewalled laboratories spend 226 minutes to comply with this aspect of audit annually, that is an annual paperwork burden of 4,068 minutes, or 68 hours (18 laboratories × 226 minutes = 4,068 minutes annually; 4,068 minutes/60 minutes per hour = approximately 68 hours).

With regard to the burden associated with proposed § 1112.13(c)(2), we estimated that it would take a governmental laboratory applicant three hours to submit the accompanying documentation required when they initially apply for CPSC acceptance. We estimated that one hour would be required to develop a description, which may be in the form of a diagram, which illustrates the laboratory's relationships with other entities, such as government agencies and joint ventures. The laboratories will not need to create the diagrams or documents again at audit, however. Therefore, instead of the one hour we estimated that governmental laboratories would spend developing a description or diagram that would be required under § 1112.13(c)(2), we estimate, for audit purposes, that laboratories will spend 10 minutes reviewing and updating the description or diagram. Similarly, instead of the one hour estimated for responding to the questionnaire that would be required under § 1112.13(c)(1), we estimate laboratories that will spend 20 minutes reviewing the document at audit. Instead of the 30 minutes we estimated that laboratories would spend creating a memorandum addressing undue influence that would be required under § 1112.13(c)(2)(iii), we estimate laboratories will spend 20 minutes reviewing and updating that memorandum at audit. A CPSC-accepted governmental laboratory stated that it took 30 minutes to complete the attestation at audit. Instead of the 30 minutes we estimated that a senior official would spend developing an attestation to facts and policies concerning the applicant, as required under § 1112.13(c)(2)(iv), we estimate

that laboratories will spend 10 minutes reviewing the attestation. Accordingly, instead of the 180 minutes we estimated that a governmental laboratory would spend in support of submitting the accompanying documentation at the time of their initial application, we estimate that a laboratory will spend 60 minutes in support of submitting the accompanying documentation at audit (10 min. reviewing the description or diagram + 20 min. reviewing the questionnaire + 20 min. reviewing the undue influence memorandum + 10 min. reviewing the attestation = 60 minutes). Based on the number of governmental laboratories that have already been accepted by the CPSC, as well as our experience with the rate of new successful applications, we predict that the total number of governmental laboratories will be 50. Half of those, or 25, will be audited annually. If 25 laboratories spend 60 minutes to comply with this aspect of audit annually, that is an annual paperwork burden of 1,500 minutes, or about 25 hours (25 laboratories × 60 minutes = 1500 minutes annually; 1500 minutes/60 minutes per hour = 25 hours).

Therefore, we estimate that the total paperwork burden associated with our proposed amendment to the definition of audit will be about 105 hours.

Finally, we estimate that the total paperwork burden associated with this rule will be 7,202 hours. Table 2 summarizes the estimates and the total paperwork burden associated with this rule.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN

16 CFR Section (proposed)	Number of respondents	Frequency of responses, percent	Total annual responses	Minutes per response	Total burden, in hours
§ 1112.13(a), Baseline documents—CPSC Form 223 and Uploading Accreditation Certificate and Statement of Scope.	450	25% per year, for 4 years.	113	75 minutes	141 hours per year.
§ 1112.13(a)(1), Laboratory update of CPSC Form 223, whenever any information previously supplied on the form changes.	450	1% per year	5	15 minutes	1.25 hours per year.
1112.13(b)(2), Additional requirements for firewalled applicants (6 documents to upload).	35	25% per year, for 4 years.	9	506 minutes (8.4 hours).	76 hours per year.
§ 1112.13(c)(2), Additional requirements for governmental lab applicants (4 requirements—upload description/diagram; respond to questionnaire; execute and submit copy of memorandum; and complete the attestation).	50	25% per year, for 4 years.	13	180 minutes (3 hours).	39 hours per year.
§ 1112.25(a)(2), Recordkeeping requirements for subcontracted test reports.	23 (5% of 450 laboratories).	25% of tests subcontracted per year (10,188 tests per year, per laboratory).	58,581 tests per year that are subcontracted.	7 minutes	6,834 hours per year.
§ 1112.29(a), Submit notification of voluntary discontinuance in writing, include 5 items.	6	100%	6	60 minutes	6 hours per year.
§ 1112.35, Adding "and accompanying documentation" to the definition of Audit.					
A. Independent (baseline documents)	A. 365 Independent laboratories.	50% per year	A. 183 Independent laboratories.	A. 4 minutes	A. 12.2 hours per year (732 minutes per year).
B. Firewalled laboratories	B. 35 Firewalled laboratories.		B 18 Firewalled laboratories.	B. 226 minutes	B. 68 hours per year (4068 minutes per year).
C. Governmental laboratories	C. 50 Governmental laboratories.		C. 25 Governmental laboratories.	C. 60 minutes	C. 25 hours per year (1,500 minutes per year).
Total Burden					7,202 hours.

In compliance with the PRA, we have submitted the information collection requirements of this rule to OMB for review. Interested persons are requested to fax comments regarding information collection by June 25, 2012, to the Office of Information and Regulatory Affairs, OMB (see **ADDRESSES**).

VII. Environmental Considerations

The proposed rule falls within the scope of the Commission's environmental review regulations at 16 CFR 1021.5(c)(1), which provide a categorical exclusion from any requirement for the agency to prepare an environmental assessment or environmental impact statement for product certification rules.

VIII. Executive Order 12988

Executive Order 12988 (February 5, 1996), requires agencies to state in clear language the preemptive effect, if any, of new regulations. The proposed regulation would be issued under authority of the CPSA and CPSIA. The CPSA provision on preemption appears at section 26 of the CPSA. The CPSIA provision on preemption appears at section 231 of the CPSIA. The

preemptive effect of this rule would be determined in an appropriate proceeding by a court of competent jurisdiction.

IX. Effective Date

The Commission proposes that any final rule based on this proposed rule become effective 90 days after its date of publication in the **Federal Register**.

The requirements for CPSC acceptance of the accreditation of a third party conformity assessment body under the final rule may differ from the requirements currently in effect. In particular, CPSC Form 223 may change, as may the accompanying documents required with an application. The Commission proposes to begin applying any new application requirements, including requirements for accompanying documents, the first time after the publication of the final rule that a laboratory submits a CPSC Form 223. For CPSC-accepted laboratories, their first submission of CPSC Form 223 after the 1112 final rule publishes would likely occur at audit.

List of Subjects

16 CFR Part 1112

Administrative practice and procedure, Audit, Consumer protection, Reporting and recordkeeping requirements, Third party conformity assessment body.

16 CFR Part 1118

Administrative practice and procedure, Consumer protection, Investigations.

For the reasons discussed in the preamble, the Consumer Product Safety Commission proposes to amend 16 CFR part 1112, as added elsewhere in this issue of the **Federal Register** and effective July 23, 2012, and 16 CFR part 1118 as follows:

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

1. The authority citation for part 1112 continues to read as follows:

Authority: Pub. L. 110–314, section 3, 122 Stat. 3016, 3017 (2008); 15 U.S.C. 2063.

2. Amend part 1112, as added elsewhere in this issue of the **Federal Register** and effective July 23, 2012, by adding § 1112.1 to read as follows:

§ 1112.1 Purpose.

This part defines the term ''third party conformity assessment body'' and describes the types of third party conformity assessment bodies that are accepted by the CPSC to test children's products under section 14 of the CPSA. It describes the requirements and procedures for becoming a CPSC-accepted third party conformity assessment body; the audit requirement applicable to third party conformity assessment bodies; how a third party conformity assessment body may voluntarily discontinue participation as a CPSC-accepted third party conformity assessment body; the grounds and procedures for withdrawal or suspension of CPSC acceptance of the accreditation of a third party conformity assessment body; and how an individual may submit information alleging grounds for adverse action.

3. Amend § 1112.3, as added elsewhere in this issue of the **Federal Register** and effective July 23, 2012, by:

a. Revising the definitions of ''Audit'' and ''CPSC,''; and

c. Adding definitions for ''Accept accreditation,'' ''Commission,'' ''CPSA,'' ''Notice of requirements,'' ''Scope,'' ''Suspend,'' ''Third party conformity assessment body,'' ''Undue Influence,'' and ''Withdraw''

The additions read as follows:.

§ 1112.3 Definitions.

* * * * *

Accept accreditation means that the CPSC has positively disposed of an application by a third party conformity assessment body to test children's products pursuant to a particular children's product safety rule, for purposes of the testing required in section 14 of the CPSA.

* * * * *

Audit means a systematic, independent, documented process for obtaining records, statements of fact, or other relevant information, and assessing them objectively to determine the extent to which specified requirements are fulfilled. An audit, for purposes of this part, consists of two parts:

(1) An examination by an accreditation body to determine whether the third party conformity assessment body meets or continues to meet the conditions for accreditation (a process known more commonly as a ''reassessment''); and

(2) The resubmission of the ''Consumer Product Conformity Assessment Body Acceptance Registration Form'' (CPSC Form 223) and accompanying documentation by the third party conformity assessment body and the Consumer Product Safety Commission's (''CPSC's'') examination of the resubmitted CPSC Form 223 and accompanying documentation. Accompanying documentation includes the baseline documents required of all applicants in § 1112.13(a), the documents required of firewalled applicants in § 1112.13(b)(2), and/or the documents required of governmental applicants in § 1112.13(c)(2).

Commission means the body of Commissioners appointed to the Consumer Product Safety Commission.

CPSA means the Consumer Product Safety Act, 15 U.S.C. 2051–2089.

CPSC means the Consumer Product Safety Commission as an agency.

Notice of requirements means a publication that provides the minimum qualifications necessary for a third party conformity assessment body to become accepted to test children's products for conformity with a particular children's product safety rule.

* * * * *

Scope means the range of particular CPSC safety rules and/or test methods to which a third party conformity assessment body has been accredited and for which it may apply for CPSC acceptance.

Suspend means the CPSC has removed its acceptance, for purposes of the testing of children's products required in section 14 of the CPSA, of a third party conformity assessment body's accreditation for failure to cooperate in an investigation under this part.

Third party conformity assessment body means a testing laboratory.

Undue influence means that a manufacturer, private labeler, governmental entity, or other interested party affects a third party conformity assessment body, such that commercial, financial, or other pressures compromise the integrity of its testing processes or results.

Withdraw means the CPSC removes its prior acceptance of a third party conformity assessment body's accreditation pursuant to a particular children's product safety rule for purposes of the testing of children's products required in section 14 of the CPSA.

4. Amend part 1112, as added elsewhere in this issue of the **Federal Register** and effective July 23, 2012, by adding subpart B, to read as follows:

Subpart B—General Requirements Pertaining to Third Party Conformity Assessment Bodies

Sec.

1112.11 What are the types of third party conformity assessment bodies?
1112.13 How does a third party conformity assessment body apply for CPSC acceptance?
1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule and/or test method?

1112.17 How will the CPSC respond to each application?
1112.19 How does the CPSC publish information identifying third party conformity assessment bodies that have been accepted?
1112.21 May a third party conformity assessment body use testing methods other than those specified in the relevant CPSC rule and/or test method?
1112.23 May a CSPC-accepted third party conformity assessment body subcontract work conducted for purposes of section 14 of the CPSA?
1112.25 What are a third party conformity assessment body's recordkeeping responsibilities?
1112.27 Must a third party conformity assessment body allow CPSC inspections related to investigations?
1112.29 How does a third party conformity assessment body voluntarily discontinue its participation with the CPSC?

Subpart B—General Requirements Pertaining to Third Party Conformity Assessment Bodies

§ 1112.11 What are the types of third party conformity assessment bodies?

(a) *Independent.* Independent third party conformity assessment bodies are third party conformity assessment bodies that are neither owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body, nor owned or controlled in whole or in part by a government;

(b) *Firewalled.* A third party conformity assessment body must apply for firewalled status if:

(1) It is owned, managed, or controlled by a manufacturer or private labeler of a children's product;

(i) For purposes of determining whether a third party conformity assessment body is firewalled, ''manufacturer'' includes a trade association.

(ii) A manufacturer or private labeler is considered to own, manage, or control a third party conformity assessment body if any one of the following characteristics applies:

(A) The manufacturer or private labeler of the children's product holds a 10 percent or greater ownership interest, whether direct or indirect, in the third party conformity assessment body. Indirect ownership interest is calculated by successive multiplication of the ownership percentages for each link in the ownership chain;

(B) The third party conformity assessment body and a manufacturer or private labeler of the children's product are owned by a common ''parent'' entity;

(C) A manufacturer or private labeler of the children's product has the ability to appoint a majority of the third party conformity assessment body's senior internal governing body (such as, but not limited to, a board of directors), the ability to appoint the presiding official (such as, but not limited to, the chair or president) of the third party conformity assessment body's senior internal governing body, and/or the ability to hire, dismiss, or set the compensation level for third party conformity assessment body personnel; or

(D) The third party conformity assessment body is under a contract to a manufacturer or private labeler of the children's product that explicitly limits the services the third party conformity assessment body may perform for other customers and/or explicitly limits which or how many other entities may also be customers of the third party conformity assessment body.

(2) The children's product is subject to a CPSC children's product safety rule that the third party conformity assessment body requests CPSC acceptance to test; and

(3) The third party conformity assessment body intends to test such children's product made by the owning, managing, or controlling entity for the purpose of supporting a Children's Product Certificate.

(c) *Governmental.* Governmental third party conformity assessment bodies are owned or controlled, in whole or in part, by a government. For purposes of this part, ''government'' includes any unit of a national, territorial, provincial, regional, state, tribal, or local government, and a union or association of sovereign states. ''Government'' also includes domestic, as well as foreign entities. A third party conformity assessment body is ''owned or controlled, in whole or in part, by a government'' if any one of the following characteristics applies:

(1) A governmental entity holds a 1 percent or greater ownership interest, whether direct or indirect, in the third party conformity assessment body. Indirect ownership interest is calculated by successive multiplication of the ownership percentages for each link in the ownership chain;

(2) A governmental entity provides any direct financial investment or funding (other than fee for work);

(3) A governmental entity has the ability to appoint a majority of the third party conformity assessment body's senior internal governing body (such as, but not limited to, a board of directors); the ability to appoint the presiding official of the third party conformity assessment body's senior internal governing body (such as, but not limited to, chair or president); and/or the ability to hire, dismiss, or set the compensation level for third party conformity assessment body personnel;

(4) Third party conformity assessment body management or technical personnel include any government employees;

(5) The third party conformity assessment body has a subordinate position to a governmental entity in its external organizational structure (not including its relationship as a regulated entity to a government regulator); or

(6) Apart from its role as regulator, the government can determine, establish, alter, or otherwise affect:

(i) The third party conformity assessment body's testing outcomes;

(ii) The third party conformity assessment body's budget or financial decisions;

(iii) Whether the third party conformity assessment body may accept particular offers of work; or

(iv) The third party conformity assessment body's organizational structure or continued existence.

§ 1112.13 How does a third party conformity assessment body apply for CPSC acceptance?

(a) *Baseline Requirements.* Each third party conformity assessment body seeking CPSC acceptance must:

(1) Submit a completed Consumer Product Conformity Assessment Body Registration Form (''CPSC Form 223'' or ''Application''). In submitting a CPSC Form 223, the third party conformity assessment body must attest to facts and characteristics about its business that will determine whether the third party conformity assessment body is independent, firewalled, or governmental. The third party conformity assessment body also must attest that it has read, understood, and agrees to the regulations in this part. The third party conformity assessment body must update its CPSC Form 223 whenever any information previously supplied on the form changes.

(2) Submit the following documentation.

(i) *Accreditation certificate.* (A) The third party conformity assessment body must be accredited to the ISO/IEC Standard 17025:2005(E), ''General requirements for the competence of testing and calibration laboratories.''

(B) The accreditation must be by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation-Mutual Recognition Arrangement (ILAC–MRA).

(ii) *Statement of scope.* The third party conformity assessment body's accreditation must include a statement of scope that clearly identifies each

CPSC rule and/or test method for which CPSC acceptance is sought. Although a third party conformity assessment body may include more than one CPSC rule and/or test method in its scope in one application, it must submit a new application if the CPSC has already accepted the third party conformity assessment body for a particular scope, and the third party conformity assessment body wishes to expand its acceptance to include additional CPSC rules and/or test methods.

(b) *Additional Requirements for Firewalled Third Party Conformity Assessment Bodies.*

(1) A third party conformity assessment body may be accepted as a firewalled third party conformity assessment body if the Commission, by order, makes the findings described in § 1112.17(b).

(2) For the Commission to evaluate whether an applicant firewalled third party conformity assessment body satisfies the criteria listed in § 1112.17(b), and in addition to the baseline accreditation requirements in paragraph (a) of this section, a firewalled third party conformity assessment body applying for acceptance of its accreditation must submit copies of:

(i) The third party conformity assessment body's established policies and procedures that explain:

(A) How the third party conformity assessment body will protect its test results from undue influence by the manufacturer, private labeler, or other interested party;

(B) That the CPSC will be notified immediately of any attempt by the manufacturer, private labeler, or other interested party to hide or exert undue influence over the third party conformity assessment body's test results; and

(C) That allegations of undue influence may be reported confidentially to the CPSC;

(ii) Training documents, including a description of the training program content, showing how employees are trained annually on the policies and procedures described in paragraph (b)(2)(i) of this section;

(iii) Training records, including a list and corresponding signatures, of the staff members who received the training identified in paragraph (b)(2)(ii) of this section. The records must include training dates, location, and the name and title of the individual providing the training;

(iv) An organizational chart(s) of the third party conformity assessment body that includes the names of all third party conformity assessment body personnel, both temporary and permanent, and their reporting relationship within the third party conformity assessment body;

(v) An organizational chart(s) of the broader organization that identifies the reporting relationships of the third party conformity assessment body within the broader organization (using both position titles and staff names); and

(vi) A list of all third party conformity assessment body personnel with reporting relationships outside of the third party conformity assessment body. The list must identify the name and title of the relevant third party conformity assessment body employee(s) and the names, titles, and employer(s) of all individuals outside of the third party conformity assessment body to whom they report;

(c) *Additional Requirements for Governmental Third Party Conformity Assessment Bodies.* (1) The CPSC may accept a governmental third party conformity assessment body if the CPSC determines that:

(i) To the extent practicable, manufacturers or private labelers located in any nation are permitted to choose third party conformity assessment bodies that are not owned or controlled by the government of that nation;

(ii) The third party conformity assessment body's testing results are not subject to undue influence by any other person, including another governmental entity;

(iii) The third party conformity assessment body is not accorded more favorable treatment than other third party conformity assessment bodies in the same nation who have been accredited;

(iv) The third party conformity assessment body's testing results are accorded no greater weight by other governmental authorities than those of other accredited third party conformity assessment bodies; and

(v) The third party conformity assessment body does not exercise undue influence over other governmental authorities on matters affecting its operations or on decisions by other governmental authorities controlling distribution of products based on outcomes of the third party conformity assessment body's conformity assessments.

(2) For the CPSC to evaluate whether a governmental third party conformity assessment body satisfies the criteria listed in paragraph (c)(1), and in addition to the baseline accreditation requirements in paragraph (a) of this section, a governmental third party conformity assessment body seeking CPSC-accepted status must submit:

(i) *Description.* A description illustrating the relationships with other entities, such as government agencies and joint ventures partners. The description may be in the form of a diagram;

(ii) *Responses to questionnaires.* The CPSC will provide a governmental third party conformity assessment body applicant with a questionnaire and will provide a separate questionnaire to the affiliated governmental entity;

(iii) *Executed memorandum.* A copy of an executed memorandum addressing undue influence;

(A) The memorandum must be:

(*1*) Addressed to all staff of the third party conformity assessment body;

(*2*) On company letterhead;

(*3*) From senior management;

(*4*) In the primary written language used for business communication in the area where the third party conformity assessment body is located; if that language is different than English, an English translation of the executed memorandum must also be provided to the CPSC;

(*5*) Displayed prominently for staff reference for as long as the accreditation of the third party conformity assessment body is accepted by the CPSC; and

(B) The memorandum must state that:

(*1*) The policy of the laboratory is to reject undue influence by any manufacturer, private labeler, governmental entity, or other interested party, regardless of that person or entity's affiliation with any organization;

(*2*) Employees are required to report immediately to their supervisor or any other official designated by the third party conformity assessment body about any attempts to gain undue influence; and

(*3*) The third party conformity assessment body will not tolerate violations of the undue influence policy.

(iv) *Attestation.* A senior officer of the governmental third party conformity assessment body, who has the authority to make binding statements of policy on behalf of the third party conformity assessment body, must attest to the following:

(A) The third party conformity assessment body seeks acceptance as a governmental third party conformity assessment body under the CPSC's program of requirements for the testing of children's products;

(B) The official intends the attestation to be considered in support of any and all applications made by this third party conformity assessment body for

acceptance of its accreditation by the CPSC, including future applications related to additional CPSC rules and/or test methods;

(C) The attestation, and any other document submitted in support of the application, is accurate in its representation of current conditions or policies at the third party conformity assessment body, to the best of the official's knowledge, information, and/or belief. The information in the attestation, and any other document submitted in support of the application, will be understood by the CPSC as continuing in its accuracy in every respect, until and unless notice of its revocation by an authorized officer of the third party conformity assessment body is received by the CPSC. The official understands that acceptance by the CPSC carries with it the obligation to comply with this part, in order to remain on the CPSC's list of accepted third party conformity assessment bodies. The attestation is submitted as a condition of acceptance of this laboratory as a governmental third party conformity assessment body by the CPSC.

(D) The word ''government'' in the attestation refers to any government (central, provincial, municipal, or other) in this third party conformity assessment body's country or administrative area and includes state-owned entities, even if those entities do not carry out governmental functions.

(E) With regard to consumer products to be distributed in commerce in the United States and subject to CPSC third party testing requirements, the third party conformity assessment body does not receive, and will not accept from any governmental entity, treatment that is more favorable than that received by other third party conformity assessment bodies in the same country or administrative area, which have been accepted as accredited for third party testing by the CPSC. More favorable treatment for a governmental third party conformity assessment body includes, but is not limited to, authorization to perform essential export-related functions, while competing CPSC-accepted laboratories in the same country or administrative area are not permitted to perform those same functions.

(F) With regard to consumer products to be sold in the United States and subject to CPSC third party testing requirements, the third party conformity assessment body's testing results are not accorded greater weight by any governmental entity that may be evaluating such results for export control purposes, compared to other third party conformity assessment bodies in the same country or administrative area, which have been accepted as accredited for third party testing by the CPSC.

(G) The third party conformity assessment body has an expressed policy, known to its employees, that forbids attempts at undue influence over any government authorities on matters affecting its operations.

(H) When a governmental third party conformity assessment body is owned or controlled by a governmental entity that also has any ownership or control over consumer product production, the senior officer of the applicant third party conformity assessment body must attest that the third party conformity assessment body will not conduct CPSC tests in support of a Children's Product Certificate for products for export to the United States that have been produced by an entity in which that governmental entity holds such ownership or control until it has applied for and been accepted by the Commission as, a dual governmental-firewalled third party conformity assessment body.

(v) *Governmental entity attestation.* In the event that the CPSC determines that its ability to accept a governmental third party conformity assessment body's application is dependent upon a recently changed circumstance in the relationship between the third party conformity assessment body and a governmental entity, and/or a recently changed policy of the related governmental entity, the CPSC may require the relevant governmental entity to attest to the details of the new relationship or policy.

(d) *Dual firewalled and governmental status.* A third party conformity assessment body that meets both the firewalled and the governmental criteria must submit applications under both firewalled and governmental categories.

(e) *English language.* All application materials must be in English.

(f) *Electronic submission.* The CPSC Form 223 and all accompanying documentation must be submitted electronically via the CPSC Web site.

(g) *Clarification and verification.* The CPSC may require additional information to determine whether the third party conformity assessment body meets the relevant criteria. In addition, the CPSC may verify accreditation certificate and scope information directly from the accreditation body before approving an application.

(h) *Retraction of Application.* A third party conformity assessment body may retract a submitted CPSC Form 223 any time before the CPSC has acted on the submission. A retraction will not end or nullify any enforcement action that the CPSC is otherwise authorized by law to pursue.

(i) 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 ISO/IEC 17025:2005(E) from the International Organization for Standardization (ISO), 1, ch. de la Voie-Creuse, Case postale 56, CH–1211 Geneva 20, Switzerland; Telephone +41 22 749 01 11, Fax +41 22 733 34 30; *http://www.iso.org/iso/catalogue_detail.htm?csnumber=39883.* 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.*

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule and/or test method?

(a) Once the CPSC publishes the requirements for accreditation to a particular CPSC rule and/or test method, a third party conformity assessment body may apply to the CPSC for acceptance to that scope of accreditation. An application may be made for acceptance of accreditation to more than one CPSC rule and/or test method. Once accepted by the CPSC, a third party conformity assessment body may apply at any time to expand the scope of its acceptance to include additional CPSC rules or test methods. A third party conformity assessment body may only issue test results for purposes of section 14 of the CPSA that fall within a scope for which the CPSC has accepted the third party conformity assessment body's accreditation.

(b) The CPSC has published previously, or in the cases of 16 CFR parts 1221, 1223, and 1224, and ASTM F 963–11 for the first time, the requirements for accreditation for third party conformity assessment bodies to assess conformity with the following CPSC rules and/or test methods:

(1) 16 CFR part 1203, Safety Standard for Bicycle Helmets;

(2) 16 CFR part 1215, Safety Standard for Infant Bath Seats;

(3) 16 CFR part 1216, Safety Standard for Infant Walkers;

(4) 16 CFR part 1217, Safety Standard for Toddler Beds;

(5) 16 CFR part 1219, Safety Standard for Full-Size Baby Cribs;

(6) 16 CFR part 1220, Safety Standard for Non-Full-Size Baby Cribs;

(7) 16 CFR part 1221, Safety Standard for Play Yards;

(8) 16 CFR part 1223, Safety Standard for Infant Swings

(9) 16 CFR part 1224, Safety Standard for Portable Bedrails;

(10) 16 CFR part 1303, Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint. For its accreditation to be accepted by the Commission to test to 16 CFR part 1303, a third party conformity assessment body must have one or more of the following test methods referenced in its statement of scope:

(i) CPSC Standard Operating Procedure for Determining Lead (Pb) in Paint and Other Similar Surface Coatings, CPSC–CH–E1003–09 and/or CPSC–CH–E1003–09.1;

(ii) ASTM F 2853–10, ''Standard Test Method for Determination of Lead in Paint Layers and Similar Coatings or in Substrates and Homogenous Materials by Energy Dispersive X-Ray Fluorescence Spectrometry Using Multiple Monochromatic Excitation Beams.''

(11) 16 CFR part 1420, Safety Standard for All-Terrain Vehicles;

(12) 16 CFR 1500.86(a)(5), Exceptions from Classification as a Banned Toy or Other Banned Article for Use by Children (Clacker Balls);

(13) 16 CFR 1500.86(a)(7) and (8), Exceptions from Classification as a Banned Toy or Other Banned Article for Use by Children (Dive Sticks and Similar Articles);

(14) 16 CFR part 1501, Method for Identifying Toys and Other Articles Intended for Use by Children Under 3 Years of Age Which Present Choking, Aspiration, or Ingestion Hazards Because of Small Parts;

(15) 16 CFR part 1505, Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children;

(16) 16 CFR part 1510, Requirements for Rattles;

(17) 16 CFR part 1511, Requirements for Pacifiers;

(18) 16 CFR part 1512, Requirements for Bicycles;

(19) 16 CFR part 1513, Requirements for Bunk Beds;

(20) 16 CFR part 1610, Standard for the Flammability of Clothing Textiles;

(21) 16 CFR part 1611, Standard for the Flammability of Vinyl Plastic Film;

(22) 16 CFR part 1615, Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X (FF 3–71);

(23) 16 CFR part 1616, Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14 (FF 5–74);

(24) 16 CFR part 1630, Standard for the Surface Flammability of Carpets and Rugs (FF 1–70);

(25) 16 CFR part 1631, Standard for the Surface Flammability of Small Carpets and Rugs (FF 2–70);

(26) 16 CFR part 1632, Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended);

(27) 16 CFR part 1633, Standard for the Flammability (Open Flame) of Mattress Sets;

(28) Lead Content in Children's Metal Jewelry. For its accreditation to be accepted by the Commission to test for lead content in children's metal jewelry, a third party conformity assessment body must have one or more of the following test methods referenced in its statement of scope:

(i) CPSC Test Method CPSC–CH–E1001–08, ''Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry)''; and/or the revision CPSC Test Method CPSC–CH–E1001–08.1, ''Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry)''; and/or

(ii) Section I, ''Screening Test for Total Pb Analysis,'' from CPSC ''Standard Operating Procedure for Determining Lead (Pb) and its Availability in Children's Metal Jewelry,'' dated February 3, 2005;

(29) Limits on Total Lead in Children's Products: Children's Metal Products. For its accreditation to be accepted by the Commission to test for total lead content in children's metal products, a third party conformity assessment body must have one or more of the following test methods referenced in its statement of scope: CPSC Test Method CPSC–CH–E1001–08, ''Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry)''; and/or the, revision CPSC Test Method CPSC–CH–E1001–08.1, ''Standard Operating Procedure for Determining Total Lead (Pb) in Children's Metal Products (Including Children's Metal Jewelry''; and/or the revision of that test method ((Test Method CPSC–CH–E1001–08.2);

(30) Limits on Total Lead in Children's Products: Non-Metal Children's Products. For its accreditation to be accepted by the Commission to test for lead content in non-metal children's products, a third party conformity assessment body must have one or more of the following test methods referenced in its statement of scope: CPSC Test Method CPSC–CH–E1002–08, ''Standard Operating Procedure for Determining Total Lead (Pb) in Non-Metal Children's Products''; and/or the revision CPSC Test Method CPSC–CH–E1002–08.1, ''Standard Operating Procedure for Determining Total Lead (Pb) in Non-Metal Children's Products''; and/or the revision of that test method ((Test Method CPSC–CH–E1002–08.2);

(31) Limits on Phthalates in Children's Toys and Child Care Articles. For its accreditation to be accepted by the Commission to test for phthalates in children's toys and child care articles, a third party conformity assessment body must have one or more of the following test methods referenced in its statement of scope:

(i) CPSC Test Method CPSC–CH–1001–09.3, ''Standard Operating Procedure for Determination of Phthalates;'' and/or

(ii) GB/T 22048–2008, ''Toys and Children's Products—Determination of Phthalate Plasticizers in Polyvinyl Chloride Plastic;''

(32) ASTM International's *Standard Consumer Safety Specification for Toy Safety,* F 963–11, and section 4.27 (toy chests) from ASTM International's *Standard Consumer Safety Specification for Toy Safety,* F 963–07ε1. The CPSC only requires certain provisions of ASTM F 963–11 and Section 4.27 of ASTM F 963–07ε1 to be subject to third party Testing; and therefore, the CPSC only accepts the accreditation of third party conformity assessment bodies for testing under the following toy safety standards:

(i) ASTM F 963–07ε1; Section 4.27—Toy Chests (except labeling and/or instructional literature requirements)

(ii) ASTM F 963–11

(A) Section 4.3.5.1(2), Surface Coating Materials—Soluble Test for Metals

(B) Section 4.3.5.2,Toy Substrate Materials

(C) Section 4.3.6.3, Cleanliness of Liquids, Pastes, Putties, Gels, and Powders (except for cosmetics and tests on formulations used to prevent microbial degradation)

(D) Section 4.3.7, Stuffing Materials

(E) Section 4.5, Sound Producing Toys

(F) Section 4.6, Small Objects (except labeling and/or instructional literature requirements)

(G) Section 4.7, Accessible Edges (except labeling and/or instructional literature requirements)

(H) Section 4.8, Projections (except bath toy projections)

(I) Section 4.9, Accessible Points (except labeling and/or instructional literature requirements)
(J) Section 4.10, Wires or Rods
(K) Section 4.11, Nails and Fasteners
(L) Section 4.12, Plastic Film
(M) Section 4.13, Folding Mechanisms and Hinges
(N) Section 4.14, Cords, Straps, and Elastics
(O) Section 4.15, Stability and Overload Requirements
(P) Section 4.16, Confined Spaces
(Q) Section 4.17, Wheels, Tires, and Axles
(R) Section 4.18, Holes, Clearances, and Accessibility of Mechanisms
(S) Section 4.19, Simulated Protective Devices (except labeling and/or instructional literature requirements)
(T) Section 4.20.1, Pacifiers with Rubber Nipples/Nitrosamine Test
(U) Section 4.20.2, Toy Pacifiers
(V) Section 4.21, Projectile Toys
(W) Section 4.22, Teethers and Teething Toys
(X) Section 4.23.1, Rattles with Nearly Spherical, Hemispherical, or Circular Flared Ends
(Y) Section 4.24, Squeeze Toys
(Z) Section 4.25, Battery-Operated Toys (except labeling and/or instructional literature requirements)
(AA) Section 4.26, Toys Intended to Be Attached to a Crib or Playpen (except labeling and/or instructional literature requirements)
(BB) Section 4.27, Stuffed and Beanbag-Type Toys
(CC) Section 4.30, Toy Gun Marking
(DD) Section 4.32, Certain Toys with Nearly Spherical Ends
(EE) Section 4.35, Pompoms
(FF) Section 4.36, Hemispheric-Shaped Objects
(GG) Section 4.37, Yo-Yo Elastic Tether Toys
(HH) Section 4.38, Magnets (except labeling and/or instructional literature requirements)
(II) Section 4.39, Jaw Entrapment in Handles and Steering Wheels

(c) The Director of the Federal Register approves the incorporations by reference in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy of the standards incorporated in this section 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.*

(1) ASTM F 2853–10, ''Standard Test Method for Determination of Lead in Paint Layers and Similar Coatings or in Substrates and Homogenous Materials by Energy Dispersive X-Ray Fluorescence Spectrometry Using Multiple Monochromatic Excitation Beams.''

(2) GB/T 22048–2008, ''Toys and Children's Products—Determination of Phthalate Plasticizers in Polyvinyl Chloride Plastic.''

§ 1112.17 How will the CPSC respond to each application?

(a) The CPSC staff will review each application and may contact the third party conformity assessment body with questions or to request submission of missing information.

(b) The application of a firewalled third party conformity assessment body will be accepted by order of the Commission, if the Commission finds that:

(1) Acceptance of the accreditation of the third party conformity assessment body would provide equal or greater consumer safety protection than the manufacturer's or private labeler's use of an independent third party conformity assessment body; and

(2) The third party conformity assessment body has established procedures to ensure that:

(i) Its test results are protected from undue influence by the manufacturer, private labeler, or other interested party;

(ii) The CPSC is notified immediately of any attempt by the manufacturer, private labeler, or other interested party to hide or exert undue influence over test results; and

(iii) Allegations of undue influence may be reported confidentially to the CPSC.

(c) The CPSC will communicate its decision on each application in writing to the applicant, which may be by electronic mail.

§ 1112.19 How does the CPSC publish information identifying third party conformity assessment bodies that have been accepted?

The CPSC will maintain on its Web site an up-to-date listing of third party conformity assessment bodies whose accreditations it has accepted and the scope of each acceptance. The CPSC will update the listing regularly to account for changes, such as the addition of new CPSC rules and/or test methods to its scope of accreditation, changes to accreditation certificates, new addresses, as well as changes to the status of a third party conformity assessment body due to voluntary discontinuance, suspension, and/or withdrawal.

§ 1112.21 May a third party conformity assessment body use testing methods other than those specified in the relevant CPSC rule and/or test method?

If the CPSC has specified a test method, a third party conformity assessment body must use that test method for any tests conducted for purposes of section 14 of the CPSA.

§ 1112.23 May a CSPC-accepted third party conformity assessment body subcontract work conducted for purposes of section 14 of the CPSA?

(a) A CPSC-accepted third party conformity assessment body (which, for purposes of this section, also will be referred to as the prime contractor) may only subcontract work conducted for purposes of section 14 of the CPSA to other third party conformity assessment bodies that have been accepted by the CPSC for the scope necessary for the subcontracted work. Violation of this provision constitutes compromising the integrity of the testing process and may be grounds for withdrawal of the CPSC's acceptance of the accreditation of the prime and/or subcontracting third party conformity assessment body.

(b) The provisions of this part apply to all CPSC-accepted third party conformity assessment bodies, even if they are a prime contractor and/or a subcontractor.

§ 1112.25 What are a third party conformity assessment body's recordkeeping responsibilities?

(a) The third party conformity assessment body must maintain the following records, which must be legible:

(1) All test reports and technical records related to tests conducted for purposes of section 14 of the CPSA must be maintained for a period of at least five years from the date the test was conducted;

(2) In the case of a test report for a test conducted by a CPSC-accepted third party conformity assessment body acting as a subcontractor, the prime contractor's test report must clearly identify which test(s) was performed by a CPSC-accepted third party conformity assessment body acting as a subcontractor(s), and the test report from the CPSC-accepted third party conformity assessment body acting as a subcontractor must be appended to the prime contractor's test report.

(3) Where a report, for purposes of section 14 of the CPSA, provided by the third party conformity assessment body to a customer is different from the test record, the third party conformity assessment body also must retain the report provided to the customer for a

period of at least five years from the date the test was conducted.

(4) Any and all third party conformity assessment body internal documents describing testing protocols and procedures (such as instructions, standards, manuals, guides, and reference data) that have applied to a test conducted for purposes of section 14 of the CPSA must be retained for a period of at least five years from the date such test was conducted.

(b) Upon request by the CPSC, the third party conformity assessment body must make any and all of the records required by this section available for inspection, either in hard copy or electronic form, within 48 hours. If the records are not in the English language, the third party conformity assessment body must make copies of the original (non-English language) available to the CPSC within 48 hours, and they must make an English translation of the records available to the CPSC within 30 calendar days of the date the CPSC requested an English translation.

§ 1112.27 Must a third party conformity assessment body allow CPSC inspections related to investigations?

A third party conformity assessment body, as a condition of the continued CPSC-acceptance of its accreditation, must allow an officer or employee duly designated by the CPSC to enter and inspect the third party conformity assessment body for purposes of an investigation under this part. The CPSC will conduct such inspections in accordance with 16 CFR 1118.2. Failure to cooperate with such an inspection constitutes failure to cooperate with an investigation and is grounds for suspension under § 1112.45.

§ 1112.29 How does a third party conformity assessment body voluntarily discontinue its participation with the CPSC?

(a) A third party conformity assessment body may voluntarily discontinue participation as a CPSC-accepted third party conformity assessment body at any time and for any portion of its scope that is accepted by the CPSC. The third party conformity assessment body must notify the CPSC, in writing, which may be electronic. The notice must include:

(1) Name, address, phone number, electronic mail address for the third party conformity assessment body and the person responsible for submitting the request;

(2) Scope of the discontinuance;

(3) Beginning date for the discontinuance;

(4) Statement that the third party conformity assessment body understands that it must reapply for acceptance of the accreditation scope for which it is requesting discontinuance; and

(5) Verification that the person requesting the discontinuance has the authority to make such a request on behalf of the third party conformity assessment body.

(b) The CPSC may verify the information submitted in a notice of voluntary discontinuance.

(c) Upon receipt of a notice from a third party conformity assessment body that it wishes to discontinue voluntarily as a CPSC-accepted third party conformity assessment body, or after verifying the information in a notice, the CPSC will update its Web site to indicate that the CPSC no longer accepts the accreditation of the third party conformity assessment body for the scope indicated, as of the date provided in the notice.

(d) Notwithstanding a third party conformity assessment body's voluntary discontinuance as a CPSC-accepted third party conformity assessment body, the CPSC may begin or continue an investigation related to an adverse action under this part, or other legal action.

5. Amend § 1112.35, as added elsewhere in this issue of the **Federal Register** and effective July 23, 2012, by adding paragraph (b) to read as follows:

§ 1112.35 When must an audit be conducted?

* * * * *

(b) For the examination portion of the audit, which is conducted by the CPSC:

(1) Each third party conformity assessment body must submit a CPSC Form 223 for audit purposes no less than every two years. When a CPSC Form 223 is submitted for audit purposes, the third party conformity assessment body must submit any accompanying documentation that would be required if it were a new application.

(2) Under § 1112.13(a)(1), a third party conformity assessment body must submit a new CPSC Form 223 whenever the information supplied on the form changes. In the event that the third party conformity assessment body submits a new CPSC Form 223 to provide updated information, the third party conformity assessment body may elect to have the new CPSC Form 223 satisfy the requirement of paragraph (b)(1) of this section. If the third party conformity assessment body intends to have the new CPSC Form 223 treated as its submission for audit purposes, the third party conformity assessment body must make that intention clear upon submission, and it must submit any accompanying documentation that would be required if it were a new application.

(3) At least 30 days prior to the date by which a third party conformity assessment body must submit a CPSC Form 223 for audit purposes, the CPSC will notify the body in writing, which may be electronic, of the impending audit deadline. A third party conformity assessment body may request an extension of the deadline for the examination portion of the audit, but it must indicate how much additional time is requested and explain why such an extension is warranted. The CPSC will notify the third party conformity assessment body whether its request for an extension has been granted.

6. Amend part 1112, as added elsewhere in this issue of the **Federal Register** and effective July 23, 2012, by adding subpart D to read as follows:

Subpart D—Adverse Actions: Types, Grounds, Allegations, Procedural Requirements, and Publication

Sec.

1112.41 What are the possible adverse actions the CPSC may take against a third party conformity assessment body?
1112.43 What are the grounds for denial of an application?
1112.45 What are the grounds for suspension of CPSC acceptance?
1112.47 What are the grounds for withdrawal of CPSC acceptance?
1112.49 How may a person submit information alleging grounds for adverse action, and what information should be submitted?
1112.51 What are the procedures relevant to adverse actions?
1112.53 Can the CPSC immediately withdraw its acceptance of the accreditation of a third party conformity assessment body?
1112.55 Will the CPSC publish adverse actions?

Subpart D—Adverse Actions: Types, Grounds, Allegations, Procedural Requirements, and Publication

§ 1112.41 What are the possible adverse actions the CPSC may take against a third party conformity assessment body?

(a) Potential adverse actions against a third party conformity assessment body include:

(1) Denial of Acceptance of Accreditation;

(2) Suspension of Acceptance of Accreditation; or

(3) Withdrawal of Acceptance of Accreditation.

(b) Withdrawal of acceptance of accreditation can be on a temporary or permanent basis, and the CPSC may immediately withdraw its acceptance in

accordance with § 1112.53 of this subpart.

§ 1112.43 What are the grounds for denial of an application?

(a) The CPSC may deny an application for any of the following reasons:

(1) Failure to complete all information, and/or attestations, and/or failure to provide accompanying documentation, required in connection with an application within 30 days after notice of a deficiency by the CPSC;

(2) Submission of false or misleading information concerning a material fact(s) on an application, any materials accompanying an application, or on any other information provided to the CPSC related to a third party conformity assessment body's ability to become or to remain a CPSC-accepted third party conformity assessment body; or

(3) Failure to satisfy necessary requirements described in § 1112.13, such as ISO/IEC 17025:2005 accreditation by a ILAC–MRA signatory accreditation body for the CPSC scope for which acceptance of accreditation is being sought.

(b) The CPSC's denial of an application will follow the process described in § 1112.51 of this subpart.

§ 1112.45 What are the grounds for suspension of CPSC acceptance?

(a) The CPSC may suspend its acceptance of a third party conformity assessment body's accreditation for any portion of its scope when the third party conformity assessment body fails to cooperate with an investigation under section 14 of the CPSA. A third party conformity assessment body ''fails to cooperate'' when it does not respond to CPSC inquiries or requests, or it responds in a manner that is unresponsive, evasive, deceptive, or substantially incomplete, or when it fails to cooperate with an investigatory inspection under § 1112.27.

(b) Suspension lasts until the third party conformity assessment body complies, to the satisfaction of the CPSC, with required actions, as outlined in the notice described in § 1112.51(b), or until the CPSC withdraws its acceptance of the third party conformity assessment body.

(c) If the CPSC determines that the third party conformity assessment body is cooperating sufficiently with the CPSC's investigation, the CPSC will lift the suspension. The suspension will lift as of the date of the CPSC's written notification to the third party conformity assessment body that the CPSC is lifting the suspension. The written notification may be by electronic mail.

§ 1112.47 What are the grounds for withdrawal of CPSC acceptance?

(a) A manufacturer, private labeler, governmental entity, or other interested party has exerted undue influence on such third party conformity assessment body or otherwise interfered with or compromised the integrity of the testing process.

(b) The third party conformity assessment body failed to comply with an applicable protocol, standard, or requirement under subpart C of this part.

(c) The third party conformity assessment body failed to comply with any provision in subpart B of this part.

§ 1112.49 How may a person submit information alleging grounds for adverse action, and what information should be submitted?

(a) *Initiating Information.* Any person may submit information to the Commission, such as by writing to the U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, or by sending electronic mail to: *labaccred@cpsc.gov.* The submission must allege that one or more of the grounds for adverse action set forth in this part exists. Any request for confidentiality must be indicated clearly in the submission. The submission should include:

(1) Contact information, including a name and/or a method by which the CPSC may contact the person providing the information;

(2) Identification of the third party conformity assessment body against whom the allegation is being made, identification of any officials or employees of the third party conformity assessment body relevant to the allegation, and contact information for such individuals.

(3) Identification of any manufacturers, distributors, importers, private labelers, and/or governmental entities relevant to the allegation. The submission also should identify any officials or employees of the manufacturers, distributors, importers, private labelers, or governmental entities relevant to the allegation, and contact information for such individuals.

(4) Description of acts and/or omissions to support each asserted ground for adverse action. Generally, the submission should describe, in detail, the basis for the allegation that grounds for adverse action against a third party conformity assessment body exists. In addition to a description of the acts and omissions and their significance, a description may include: Dates, times, persons, companies, governmental entities, locations, products, tests, test results, equipment, supplies, frequency of occurrence, and negative outcomes. When possible, the submission should attach documents, records, photographs, correspondence, notes, electronic mails, or any other information that supports the basis for the allegations;

(5) Description of the impact of the acts and/or omissions, where known.

(b) *Review of Initiating Information.* Upon receiving the information, the CPSC will review the information to determine if it is sufficient to warrant an investigation. The CPSC may deem the information insufficient to warrant an investigation if the information fails to address adequately the categories of information outlined in paragraph (a) of this section above.

§ 1112.51 What are the procedures relevant to adverse actions?

(a) *Investigation.* (1) Investigations under this part are investigations into grounds for an adverse action against a third party conformity assessment body.

(2) The Commission will use its *Procedures for Investigations, Inspections, and Inquiries,* 16 CFR part 1118, subpart A, to investigate under this part.

(3) An investigation under this part may include any act the CPSC takes to verify the accuracy, veracity, and/or completeness of information received in connection with an application for acceptance of accreditation, a submission alleging grounds for an adverse action, or any other information received by the CPSC that relates to a third party conformity assessment body's ability to become or remain a CPSC-accepted third party conformity assessment body.

(4) The CPSC will begin an investigation under this part by providing written notice, which may be electronic, to the third party conformity assessment body. The notice will inform the third party conformity assessment body that the CPSC has received information sufficient to warrant an investigation, and it will describe the information received by the CPSC and the CPSC's investigative process. The notice also will inform the third party conformity assessment body that failure to cooperate with a CPSC investigation is grounds for suspension under § 1112.45 of this subpart.

(5) The notice sent by the CPSC under § 1112.35(b)(3) informing the third party conformity assessment body that it must submit a CPSC Form 223 for audit purposes, which may be electronic, constitutes notice of investigation for purposes of this section. The

examination portion of an audit under § 1112.33(c) constitutes an investigation for purposes of this section.

(b) *Initial notice.* If, after investigation, the CPSC determines that grounds for adverse action exist and proposes to take an adverse action against a third party conformity assessment body, the CPSC will notify the third party conformity assessment body, in writing, which may be electronic, about the proposed adverse action. If the proposed adverse action is suspension or withdrawal, the notice formally begins a proceeding to suspend or withdraw, as described in section 14(e) of the CPSA. The notice will contain:

(1) The proposed adverse action;

(2) Specific grounds on which the proposed adverse action is based;

(3) Findings of fact to support the proposed adverse action;

(4) When appropriate, specific actions a third party conformity assessment body must take to avoid an adverse action;

(5) When the proposed adverse action is withdrawal, consideration of the criteria set forth in paragraph (d)(1) of this section;

(6) The time period by which a third party conformity assessment body has to respond to the notice. In general, the notice will inform the third party conformity assessment body that it has 30 calendar days to respond. A third party conformity assessment body may request an extension of the response time, but they must explain why such an extension is warranted and the amount of additional time needed for a response; and

(7) Except under § 1112.53, a CPSC-accepted third party conformity assessment body may continue to conduct tests for purposes of section 14 of the CPSA until a Final Notice of adverse action is issued.

(c) *Third party conformity assessment body response to initial notice.* A third party conformity assessment body's response must be submitted in writing, in English, and may be in the form of electronic mail. The response may include, but is not limited to, an explanation or refutation of material facts upon which the Commission's proposed action is based, supported by documents or sworn affidavit; results of any internal review of the matter and action(s) taken as a result; or a detailed plan and schedule for an internal review. The written response must state the third party conformity assessment body's reasons why the ground(s) for adverse action does not exist, or for why the CPSC should not pursue the proposed adverse action, or any portion of the proposed adverse action. If a third party conformity assessment body responds to the notice in a timely manner, the CPSC will review the response, and, if necessary, investigate further to explore or resolve issues bearing on whether grounds exist for adverse action and the nature of the proposed adverse action. If a third party conformity assessment body does not respond to the notice in a timely manner, the CPSC may proceed without further delay to a Final Notice, as described in paragraph (e) of this section.

(d) *Proceeding.* (1) In any proceeding to withdraw the CPSC's acceptance of a third party conformity assessment body's accreditation, the CPSC will consider the gravity of the third party conformity assessment body's action or failure to act, including:

(i) Whether the action or failure to act resulted in injury, death, or the risk of injury or death;

(ii) Whether the action or failure to act constitutes an isolated incident or represents a pattern or practice; and

(iii) Whether and when the third party conformity assessment body initiated remedial action.

(2) In all cases, the CPSC will review and take under advisement the response provided by the third party conformity assessment body. Except for cases under paragraph (d)(3) of this section, the CPSC will determine what action is appropriate under the circumstances.

(3) If, after reviewing and taking under advisement the response provided by a CPSC-accepted firewalled third party conformity assessment body, the CPSC staff concludes that suspension or withdrawal of CPSC acceptance of accreditation is appropriate, staff will transmit their recommendation to the Commission for consideration. Any suspension or withdrawal of CPSC acceptance of accreditation of a firewalled third party conformity assessment body (including immediate and temporary withdrawal under § 1112.53) will be by order of the Commission.

(4) The CPSC may withdraw its acceptance of the accreditation of a third party conformity assessment body on a permanent or temporary basis.

(5) If the CPSC withdraws its acceptance of the accreditation of a third party conformity assessment body, the CPSC may establish conditions for the reacceptance of the accreditation of the third party conformity assessment body, under section 14(e)(2)(B)(ii) of the CPSA. Any such conditions would be related to the reason(s) for the withdrawal.

(e) *Final notice.* If, after reviewing a third party conformity assessment body's response to a notice and conducting additional investigation, where necessary, the CPSC determines that grounds for adverse action exist, it will send a Final Notice to the third party conformity assessment body, in writing, which may be electronic. The Final Notice will state:

(1) The adverse action that the CPSC is taking;

(2) Specific grounds on which the adverse action is based;

(3) Findings of fact that support the adverse action;

(4) When the adverse action is withdrawal, consideration of the criteria as set forth in paragraph (d)(1) of this section;

(5) When the adverse action is withdrawal, whether the withdrawal is temporary or permanent, and if temporary, the duration of the withdrawal;

(6) The third party conformity assessment body's accreditation is not accepted by the Commission as of the date of the Final Notice of denial, suspension, or withdrawal, for specified portion(s) of its CPSC scope. The CPSC Web site will be updated to reflect adverse actions to any previously CPSC-accepted third party conformity assessment bodies; and

(7) Whether the third party conformity assessment body may submit a new application.

(f) *Possible actions after final notice.* Upon receipt of a Final Notice, a third party conformity assessment body, as applicable, may:

(1) If the Final Notice indicates such, the third party conformity assessment body may submit a new application; or

(2) File an Administrative Appeal.

(g) *Administrative appeal.* (1) Except for paragraph (g)(2) of this section, the third party conformity assessment body may file an Administrative Appeal with the Office of the Executive Director.

(i) The Administrative Appeal must be sent, by mail, within 30 calendar days of the date on the Final Notice to: The Office of the Executive Director, Room 812, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, or by electronic mail to: *cpsc-os@cpsc.gov.*

(ii) All appeals must be in writing, in English.

(iii) All appeals must explain the nature and scope of the issues appealed from in the Final Decision, and must describe in detail the reasons why the third party conformity assessment body believes that no ground(s) for adverse action exist.

(iv) If an Administrative Appeal is timely filed, the Executive Director will issue a Final Decision within 60 calendar days of receipt. If the Executive Director's Final Decision requires more than 60 calendar days, he or she will notify the third party conformity assessment body that more time is required, state the reason(s) why more time is required, and, if feasible, include an estimated date for a Final Decision to issue.

(2) In the case that the Commission has suspended or withdrawn its acceptance of the accreditation of a firewalled third party conformity assessment body, the firewalled third party conformity assessment body may file an Administrative Appeal with the Commission.

(i) The Administrative Appeal must be sent, by mail, within 30 calendar days of the date on the Final Notice to: The Office of the Secretary, Room 820, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, or by electronic mail to: *cpsc-os@cpsc.gov.*

(ii) All appeals must be in writing, in English.

(iii) All appeals must explain the nature of the issues appealed from in the Final Decision, and must describe in detail the reasons why the third party conformity assessment body believes that no ground(s) for adverse action exist.

§ 1112.53 Can the CPSC immediately withdraw its acceptance of the accreditation of a third party conformity assessment body?

(a) When it is in the public interest to protect health and safety, and notwithstanding any other provision of this part, the CPSC may withdraw immediately and temporarily its acceptance of a third party conformity assessment body's accreditation for any portion of its CPSC scope while the CPSC pursues an investigation and potential adverse action under § 1112.51 of this subpart.

(1) For purposes of this part, ''in the public interest to protect health and safety'' means that the CPSC has credible evidence that:

(i) The integrity of test(s) being conducted under a scope for which the CPSC has accepted the third party conformity assessment body's accreditation, have been affected by undue influence or otherwise interfered with or compromised; and

(ii) The scope for which the CPSC has accepted the third party conformity assessment body's accreditation involve a product(s) which, if noncompliant with CPSC rules, bans, standards, and/or regulations, constitutes an imminently hazardous consumer product under section 12 of the CPSA.

(2) When presented with an allegation that, if credible, would result in immediate and temporary withdrawal of CPSC acceptance of a third party conformity assessment body's accreditation, the investigation and adverse action procedures described in § 1112.51 apply, except that instead of the timeframes described in § 1112.51, the following timeframes will apply when the CPSC pursues immediate and temporary withdrawal:

(i) The Initial Notice will generally inform the third party conformity assessment body that it has 7 calendar days to respond.

(ii) An administrative appeal of a Final Notice of immediate and temporary withdrawal will be timely if filed within 7 calendar days of the date of the Final Notice.

(b) If the third party conformity assessment body is already the subject of an investigation or adverse action process under § 1112.51 of this subpart, the immediate and temporary withdrawal will remain in effect until: The agency communicates in writing that the immediate and temporary withdrawal has been lifted; the investigation concludes and the agency does not propose an adverse action; or the adverse action process concludes with denial, suspension, or withdrawal.

(c) If the third party conformity assessment body is not already the subject of an investigation or adverse action process under § 1112.51 of this subpart, an investigation under § 1112.51(a) will be launched based on the same information that justified the immediate and temporary withdrawal.

§ 1112.55 Will the CPSC publish adverse actions?

Immediately following a final adverse action, the CPSC may publish the fact of a final adverse action, the text of a final adverse action, or a summary of the substance of a final adverse action. After issuance of a final adverse action, the CPSC will amend its Web site listing of CPSC-accepted third party conformity assessment bodies to reflect the nature and scope of such adverse action.

PART 1118—INVESTIGATIONS, INSPECTIONS, AND INQUIRIES UNDER THE CONSUMER PRODUCT SAFETY ACT

7. The authority citation for part 1118 is revised to read as follows:

Authority: 15 U.S.C. 2063; 15 U.S.C. 2065; 15 U.S.C. 2068; 15 U.S.C. 2076; sec. 3, Pub. L. 110–314, 122 Stat. 3016.

8. Amend § 1118.2 by revising paragraph (a) to read as follows:

§ 1118.2 Conduct and scope of inspections.

(a) After an inspection is initiated as set forth in § 1118.1, an officer or employee duly designated by the Commission shall issue the notice of inspection (hereinafter referred to as ''notice''). Upon presenting the notice, along with appropriate credentials, to the person or agent in charge of the firm to be inspected, the Commission officer or employee is authorized for the purposes set forth in § 1118.1(a):

(1) To enter, at reasonable times, any factory, warehouse, firewalled third party conformity assessment body, or establishment in which products are manufactured, tested, or held, in connection with distribution in commerce, or any conveyance being used to transport products in connection with distribution in commerce; and

(2) To inspect, at reasonable times and in a reasonable manner, any conveyance or those areas of the factory, warehouse, firewalled third party conformity assessment body, or establishment where products are manufactured, tested, held, or transported and that may relate to the safety of those products; and

(3) To have access to and to copy all relevant records, books, documents, papers, packaging, or labeling which:

(i) Is required by the Commission to be established, made or maintained, or

(ii) Show or relate to the production, inventory, testing, distribution, sale, transportation, importation, or receipt of any product, or that are otherwise relevant to determining whether any person or firm has acted or is acting in compliance with the Act and regulations, rules, and orders promulgated under the Act, and

(4) To obtain:

(i) Information, both oral and written, concerning the production, inventory, testing, distribution, sale, transportation, importation, or receipt of any product, and the organization, business, conduct, practices, and management of any person or firm being inspected and its relation to any other person or firm;

(ii) Samples of items, materials, substances, products, containers, packages and packaging, and labels and labeling, or any component at manufacturer's, distributor's, third party conformity assessment body's, or retailer's cost, unless voluntarily provided; and

(iii) Information, both oral and written, concerning any matter referred to in the Act and these rules.

* * * * *

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

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Part III

The President

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Presidential Documents

Title 3—

The President

Proclamation 8824 of May 21, 2012

Emergency Medical Services Week, 2012

By the President of the United States of America

A Proclamation

Day and night, in communities across our country, men and women providing emergency medical services (EMS) stand at the front lines of our public safety and public health systems, ready to respond with care and efficiency at a moment's notice. During Emergency Medical Services Week, we honor their essential contributions to our health and safety, and we recommit to supporting all EMS personnel as they carry out their courageous work.

Representing a diverse array of professions and skill sets, EMS practitioners are united by their devotion to building a stronger, more resilient Nation. They serve in both the public and private sectors—from the first responders, emergency medical technicians, and paramedics who arrive at the scene to 911 dispatchers, firefighters, law enforcement officers, and professionals throughout our health care system who work together to ensure those in need receive the highest level of emergency service. Thousands of Americans have dedicated their careers to saving lives as EMS practitioners; thousands more serve as volunteers, going above and beyond to sustain the health and safety of their communities. As they tirelessly pursue that critical mission, my Administration remains committed to working with partners across government and industry to strengthen our EMS system and bolster preparedness in homes and hospitals across America.

Emergency medical services personnel demonstrate a profound commitment to our country and to our common humanity. Day after day, they answer the call to serve—to step into crisis and spark hope where it grows dim. This week, let us pay tribute to these selfless individuals and renew our promise to provide them with the support and services they need to protect their communities.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 20 through May 26, 2012, as Emergency Medical Services Week. I encourage all Americans to observe this occasion by sharing their support with their local EMS providers and taking steps to improve their personal safety and preparedness.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of May, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–12876
Filed 5–23–12; 11:15 am]
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Presidential Documents

Proclamation 8825 of May 21, 2012

National Safe Boating Week, 2012

By the President of the United States of America

A Proclamation

For generations, Americans have enjoyed our scenic lakes, rivers, and oceans as places for rest and recreation, sharing with friends and family a well-loved tradition. During National Safe Boating Week, we renew our commitment to safe, responsible practices on our Nation's waterways.

By planning ahead and taking basic safety precautions, boat operators and passengers can help prevent needless accidents and deaths. Before going out on the water, boaters can minimize the risk of accident or injury by taking a boating safety course, performing a vessel safety check, filing a float plan with a friend or family member prior to departure, and carefully assessing weather conditions. Operators and passengers alike can stay safe by wearing a life jacket at all times, and by forgoing alcohol consumption while on or operating a boat.

The United States Coast Guard continues to collaborate with organizations and governments across our country to prevent loss of life, personal harm, and property damage associated with unsafe recreational boating. As we mark National Safe Boating Week, let us reflect on that important mission and resolve to do our part to ensure America's waterways are safe and secure for all.

In recognition of the importance of safe boating practices, the Congress, by joint resolution approved June 4, 1958 (36 U.S.C. 131), as amended, has authorized and requested the President to proclaim annually the 7-day period prior to Memorial Day weekend as ''National Safe Boating Week.''

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim May 19 through May 25, 2012, as National Safe Boating Week. I encourage all Americans who participate in boating activities to observe this occasion by learning more about safe boating practices and taking advantage of boating education.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of May, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–12877
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Billing code 3295–F2–P

Presidential Documents

Proclamation 8826 of May 21, 2012

National Small Business Week, 2012

By the President of the United States of America

A Proclamation

For centuries, America's progress has been driven by pioneers who think big, take risks, and work hard. Where their ideas take root, we find inventions that can change the way we live. And when their businesses take off, they fuel an engine of economic growth and job creation that moves America forward. During National Small Business Week, we celebrate the generations of entrepreneurs who have given their all to realize a dream, and we renew our promise to help their businesses grow, hire, and succeed.

Because small businesses are the backbone of our economy, we must ensure our country recovers and rebuilds not only from the top down, but also from the bottom up and the middle out. That is how we will forge an America built to last, and that is why my Administration continues to widen the circle of opportunity for our workers and our businesses. Since I took office, we have repeatedly cut taxes for small businesses and expanded access to the capital they need to thrive. We launched the Startup America initiative, which has connected entrepreneurs to mentorship opportunities, cut red tape that would limit their success, and accelerated innovation in critical industries like health care, clean energy, and education. I was proud to sign the America Invents Act, which is helping entrepreneurs and businesses bring their inventions to market as quickly as possible. Through the American Recovery and Reinvestment Act and the Small Business Jobs Act, the Small Business Administration has supported over $70 billion in lending to small businesses nationwide, and agencies across my Administration have taken action to make Government a more effective resource for entrepreneurs.

Yet, when Americans who want to work cannot find a job, we know we must do more. Last month, I was proud to sign the Jumpstart Our Business Startups Act, a bipartisan bill that enables ordinary Americans to invest in entrepreneurs they believe in. I was also proud to announce the Small Business Network of the Americas and the Women's Entrepreneurship in the Americas initiative, which—coupled with new Free Trade Agreements with Korea, Colombia, and Panama—will help unlock new markets for companies of all sizes, expand small business exports, and support the broad-based economic growth that is essential to our prosperity. And earlier this year, we launched Business USA—a new online platform to give businesses full access to the resources they need at every stage of development. Moving forward, we will continue to promote tax reform to ease burdens on small businesses and entrepreneurs. And we will seek out new ways to help our companies grow by opening up the global marketplace, leveling the playing field, and forging strong partnerships between government and private enterprise.

Our Nation has always believed that anyone with a solid plan and a willingness to work hard can turn even an improbable idea into a successful business. For generations, that powerful notion has been at the heart of the American promise, forging a legacy of bold entrepreneurship that lives on today and lights the path to a brighter tomorrow. During National Small

Business Week, let us reflect on that proud history and resolve to carry it forward in the years to come.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 20 through May 26, 2012, as National Small Business Week. I call upon all Americans to recognize the contributions of small businesses to the competitiveness of the American economy with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of May, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–12879
Filed 5–23–12; 11:15 am]
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Presidential Documents

Proclamation 8827 of May 21, 2012

World Trade Week, 2012

By the President of the United States of America

A Proclamation

America has always been a Nation of doers, makers, growers, and builders. Empowered by innovative universities, pioneering entrepreneurs, and productive workers, we have met a global demand for goods and services designed and produced by Americans. During World Trade Week, we reaffirm the essential role exports play in creating jobs and growing our economy.

Two years ago, my Administration launched the National Export Initiative with the goal of doubling our exports by the end of 2014. We continue to make historic progress toward achieving this goal; last year, exports surpassed $2.1 trillion in value for the first time in our history. This kind of growth protects and creates jobs here at home, helping individuals, families, and entire communities prosper.

We are determined to do everything in our power to sustain this momentum. Last year, I signed legislation to implement three trade agreements that will make it easier for American companies, farmers, and ranchers to sell their products in Korea, Panama, and Colombia. These agreements will support tens of thousands of American jobs, generate billions of dollars in additional exports, and help level the playing field to ensure our businesses can compete and succeed in the global marketplace. To ensure competitors play by the rules, we created the Interagency Trade Enforcement Center, which will aggressively investigate unfair trade practices taking place anywhere in the world. These and other measures will help maintain our Nation's competitive edge in a challenging and evolving global economy.

Because 95 percent of the world's consumers live outside the United States, we must continue to look beyond our borders—from Beijing to Bogota—to open new markets for American exporters. As we work to expand economic opportunity here at home, we are reminded how three proud words, ''Made in America,'' will ensure our next generation inherits an economy built to last.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 20 through May 26, 2012, as World Trade Week. I encourage all Americans to observe this week with events, trade shows, and educational programs that celebrate and inform Americans about the benefits of trade to our Nation and the global economy.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of May, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–12880
Filed 5–23–12; 11:15 am]
Billing code 3295–F2–P

Presidential Documents

Executive Order 13612 of May 21, 2012

Providing an Order of Succession Within the Department of Agriculture

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, as amended, 5 U.S.C. 3345 *et seq.* (the ''Act''), it is hereby ordered that:

Section 1. *Order of Succession.* (a) Subject to the provisions of section 2 of this order, and to the limitations set forth in the Act, the following officials of the Department of Agriculture, in the order listed, shall act as and perform the functions and duties of the office of Secretary of Agriculture (Secretary) during any period in which both the Secretary and the Deputy Secretary of Agriculture (Deputy Secretary) have died, resigned, or are otherwise unable to perform the functions and duties of the office of Secretary:

(1) Under Secretary of Agriculture for Farm and Foreign Agricultural Services;

(2) Under Secretary of Agriculture for Food, Nutrition, and Consumer Services;

(3) Assistant Secretary of Agriculture for Administration;

(4) Under Secretary of Agriculture for Research, Education, and Economics;

(5) Under Secretary of Agriculture for Food Safety;

(6) Under Secretary of Agriculture for Natural Resources and Environment;

(7) Under Secretary of Agriculture for Rural Development;

(8) Under Secretary of Agriculture for Marketing and Regulatory Programs;

(9) General Counsel of the Department of Agriculture;

(10) Chief of Staff, Office of the Secretary;

(11) State Executive Directors of the Farm Service Agency for the States of California, Iowa, and Kansas, in order of seniority fixed by length of unbroken service as State Executive Director of that State;

(12) Regional Administrators of the Food and Nutrition Service for the Mountain Plains Regional Office (Denver, Colorado), Midwest Regional Office (Chicago, Illinois), and Western Regional Office (San Francisco, California), in order of seniority fixed by length of unbroken service as Regional Administrator of that Regional Office;

(13) Chief Financial Officer of the Department of Agriculture;

(14) Assistant Secretary of Agriculture (Civil Rights); and

(15) Assistant Secretary of Agriculture (Congressional Relations).

(b) If any two or more individuals designated in paragraph (11) or (12) of subsection (a) were sworn in to, or commenced service in, their respective offices on the same day, precedence shall be determined by the alphabetical order of the State in which the individual serves.

Sec. 2. *Exceptions.* (a) No individual who is serving in an office listed in section 1(a)(1)–(15) of this order in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.

(b) No individual who is serving in an office listed in section 1(a)(1)–(15) of this order shall act as Secretary unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Secretary.

Sec. 3. *Revocation.* Executive Order 13542 of May 13, 2010 (Providing an Order of Succession Within the Department of Agriculture), is hereby revoked.

Sec. 4. *Judicial Review.* This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
May 21, 2012.

[FR Doc. 2012–12881
Filed 5–23–12; 11:15 am]
Billing code 3295–F2–P

Presidential Documents

Executive Order 13613 of May 21, 2012

Providing an Order of Succession Within the Department of Commerce

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, as amended, 5 U.S.C. 3345 *et seq.* (the ''Act''), it is hereby ordered that:

Section 1. *Order of Succession.* Subject to the provisions of section 2 of this order, and to the limitations set forth in the Act, the following officials of the Department of Commerce, in the order listed, shall act as and perform the functions and duties of the office of the Secretary of Commerce (Secretary) during any period in which the Secretary has died, resigned, or otherwise become unable to perform the functions and duties of the office of the Secretary:

(a) Deputy Secretary of Commerce;

(b) General Counsel of the Department of Commerce;

(c) Under Secretary of Commerce for International Trade;

(d) Under Secretary of Commerce for Economic Affairs;

(e) Under Secretary of Commerce for Standards and Technology;

(f) Under Secretary of Commerce for Oceans and Atmosphere and Administrator of the National Oceanic and Atmospheric Administration;

(g) Under Secretary of Commerce for Export Administration;

(h) Chief Financial Officer of the Department of Commerce and Assistant Secretary of Commerce (Administration); and

(i) The Boulder Laboratories Site Manager, National Institute of Standards and Technology.

Sec. 2. *Exceptions.* (a) No individual who is serving in an office listed in section 1(a)–(i) of this order in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.

(b) No individual listed in section 1(a)–(i) of this order shall act as Secretary unless that individual is otherwise eligible to so serve under the Act, as amended.

(c) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Secretary.

Sec. 3. *Revocation.* Executive Order 13242 of December 18, 2001 (Providing An Order of Succession Within the Department of Commerce) and Memorandum for the Secretary of Commerce of October 3, 2002 (Designation of Officers of the Department of Commerce to Act as Secretary of Commerce) are hereby revoked.

Sec. 4. *Judicial Review.* This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
May 21, 2012.

[FR Doc. 2012–12882
Filed 5–23–12; 11:15 am]
Billing code 3295–F2–P

Presidential Documents

Executive Order 13614 of May 21, 2012

Providing an Order of Succession Within the Environmental Protection Agency

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, as amended, 5 U.S.C. 3345 *et seq.* (the ''Act''), it is hereby ordered that:

Section 1. *Order of Succession.* Subject to the provisions of section 2 of this order, and to the limitations set forth in the Act, the following officials of the Environmental Protection Agency, in the order listed, shall act as and perform the functions and duties of the office of the Administrator of the Environmental Protection Agency (Administrator) during any period in which the Administrator and the Deputy Administrator of the Environmental Protection Agency have died, resigned, or become otherwise unable to perform the functions and duties of the office of Administrator:

(a) General Counsel;

(b) Assistant Administrator, Office of Solid Waste;

(c) Assistant Administrator for Toxic Substances (also known as the Assistant Administrator for the Office of Chemical Safety and Pollution Prevention);

(d) Assistant Administrator for the Office of Air and Radiation;

(e) Assistant Administrator for the Office of Water;

(f) Assistant Administrator for the Office of Enforcement and Compliance Assurance;

(g) Chief Financial Officer;

(h) Assistant Administrator for the Office of Research and Development;

(i) Assistant Administrator for the Office of International and Tribal Affairs;

(j) Assistant Administrator for the Office of Administration and Resources Management;

(k) Assistant Administrator for the Office of Environmental Information;

(l) Regional Administrator, Region VIII; and

(m) Deputy Regional Administrator, Region II.

Sec. 2. *Exceptions.* (a) No individual who is serving in an office listed in section 1(a)–(m) of this order in an acting capacity shall, by virtue of so serving, act as Administrator pursuant to this order.

(b) No individual listed in section 1(a)–(m) of this order shall act as Administrator unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998, as amended.

(c) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Administrator.

Sec. 3. *Revocation.* Executive Order 13261 of March 19, 2002 (Providing an Order of Succession in the Environmental Protection Agency and Amending Certain Orders on Succession) and Executive Order 13344 of July 7, 2004 (Amending Executive Order 13261 on the Order of Succession in the Environmental Protection Agency), are hereby revoked.

Sec. 4. *Judicial Review.* This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
May 21, 2012.

[FR Doc. 2012–12883
Filed 5–23–12; 11:15 am]
Billing code 3295–F2–P

Presidential Documents

Executive Order 13615 of May 21, 2012

Providing an Order of Succession Within the Office of Management and Budget

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, as amended, 5 U.S.C. 3345 *et seq.* (the ''Act''), it is hereby ordered that:

Section 1. *Order of Succession.* Subject to the provisions of section 2 of this order, and to the limitations set forth in the Act, the following officers of the Office of Management and Budget, in the order listed, shall act as and perform the functions and duties of the office of Director during any period in which both the Director of the Office of Management and Budget (Director) and the Deputy Director of the Office of Management and Budget (Deputy Director) have died, resigned, or otherwise become unable to perform the functions and duties of the office of Director:

(a) Deputy Director for Management;

(b) Executive Associate Director;

(c) Associate Director (National Security Programs);

(d) Associate Director (General Government Programs);

(e) Associate Director (Education, Income Maintenance, and Labor Programs);

(f) Associate Director (Health Programs);

(g) Associate Director (Natural Resource Programs);

(h) General Counsel;

(i) Administrator for Federal Procurement Policy;

(j) Administrator of the Office of Information and Regulatory Affairs;

(k) Controller, Office of Federal Financial Management;

(l) Administrator of the Office of Electronic Government; and

(m) Intellectual Property Enforcement Coordinator.

Sec. 2. *Exceptions.* (a) No individual who is serving in an office listed in section 1(a)–(m) of this order in an acting capacity, by virtue of so serving, shall act as Director pursuant to this order.

(b) No individual listed in section 1(a)–(m) of this order shall act as Director unless that individual is otherwise eligible to so serve under the Act.

(c) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Director.

Sec. 3. *Revocation.* Executive Order 13370 of January 13, 2005 (Providing an Order of Succession in the Office of Management and Budget), is hereby revoked.

Sec. 4. *Judicial Review.* This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
May 21, 2012.

[FR Doc. 2012–12889
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H.R. 298/P.L. 112–107

To designate the facility of the United States Postal Service located at 500 East Whitestone Boulevard in Cedar Park, Texas, as the "Army Specialist Matthew Troy Morris Post Office Building". (May 15, 2012; 126 Stat. 328)

H.R. 1423/P.L. 112–108

To designate the facility of the United States Postal Service located at 115 4th Avenue Southwest in Ardmore, Oklahoma, as the "Specialist Michael E. Phillips Post Office". (May 15, 2012; 126 Stat. 329)

H.R. 2079/P.L. 112–109

To designate the facility of the United States Postal Service located at 10 Main Street in East Rockaway, New York, as the "John J. Cook Post Office". (May 15, 2012; 126 Stat. 330)

H.R. 2213/P.L. 112–110

To designate the facility of the United States Postal Service located at 801 West Eastport Street in Iuka, Mississippi, as the "Sergeant Jason W. Vaughn Post Office". (May 15, 2012; 126 Stat. 331)

H.R. 2244/P.L. 112–111

To designate the facility of the United States Postal Service located at 67 Castle Street in Geneva, New York, as the "Corporal Steven Blaine Riccione Post Office". (May 15, 2012; 126 Stat. 332)

H.R. 2660/P.L. 112–112

To designate the facility of the United States Postal Service located at 122 North Holderrieth Boulevard in Tomball, Texas, as the "Tomball Veterans Post Office". (May 15, 2012; 126 Stat. 333)

H.R. 2668/P.L. 112–113

Brian A. Terry Memorial Act (May 15, 2012; 126 Stat. 334)

H.R. 2767/P.L. 112–114

To designate the facility of the United States Postal Service located at 8 West Silver Street in Westfield, Massachusetts, as the "William T. Trant Post Office Building". (May 15, 2012; 126 Stat. 336)

H.R. 3004/P.L. 112–115

To designate the facility of the United States Postal Service located at 260 California Drive in Yountville, California, as the "Private First Class Alejandro R. Ruiz Post Office Building". (May 15, 2012; 126 Stat. 337)

H.R. 3246/P.L. 112–116

To designate the facility of the United States Postal Service located at 15455 Manchester Road in Ballwin, Missouri, as the "Specialist Peter J. Navarro Post Office Building". (May 15, 2012; 126 Stat. 338)

H.R. 3247/P.L. 112–117

To designate the facility of the United States Postal Service located at 1100 Town and Country Commons in Chesterfield, Missouri, as the "Lance Corporal Matthew P. Pathenos Post Office Building". (May 15, 2012; 126 Stat. 339)

H.R. 3248/P.L. 112–118

To designate the facility of the United States Postal Service located at 112 South 5th Street in Saint Charles, Missouri, as the "Lance Corporal Drew W. Weaver Post Office Building". (May 15, 2012; 126 Stat. 340)

S. 1302/P.L. 112–119

To authorize the Administrator of General Services to convey a parcel of real property in Tracy, California, to the City of Tracy. (May 15, 2012; 126 Stat. 341)

Last List April 12, 2012

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