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FEDERAL REGISTER

Vol. 77 Wednesday,
No. 124 June 27, 2012

Pages 38171–38462

OFFICE OF THE FEDERAL REGISTER

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

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WHEN: Tuesday, July 10, 2012
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Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION

5 CFR Part 9301

RIN 3460–AA00

Freedom of Information Act and Privacy Act Procedures

AGENCY: Special Inspector General for Afghanistan Reconstruction.

ACTION: Correcting amendments.

SUMMARY: On June 11, 2012 (77 FR 34179) the Special Inspector General for Afghanistan Reconstruction published a final rule, revising its regulations establishing procedures for the public to obtain information from the Special Inspector General for Afghanistan Reconstruction under the Freedom of Information Act (FOIA) and the Privacy Act of 1974. These procedures will facilitate public interaction with SIGAR. The June 11, 2012 final rule inadvertently omitted several amendments in response to the public comments SIGAR received. The purpose of this document is to make the necessary corrections.

DATES: This final rule is effective June 27, 2012.

FOR FURTHER INFORMATION CONTACT: Kate Gastner, Public Information Manager, at (703) 545–5993, email: *mary.k.gastner.civ@mail.mil.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 28, 2008, the President signed into law the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), which created the Special Inspector General for Afghanistan Reconstruction (SIGAR). In order to establish procedures to facilitate public interaction with SIGAR, the agency is issuing final regulations under the FOIA and the Privacy Act.

On June 11, 2012 (77 FR 34179) SIGAR published a final rule revising its regulations, 5 CFR Chapter LXXXIII part 9301, establishing procedures for the public to obtain information from the Special Inspector General for Afghanistan Reconstruction under the Freedom of Information Act (FOIA) and the Privacy Act of 1974.

Unfortunately, SIGAR inadvertently omitted several amendments which specifically addressed several public comments the agency received during the interim rule phase.

List of Subjects in 5 CFR Part 9301

Administrative practice and procedure, Freedom of information, Privacy.

Accordingly, 5 CFR part 9301 is corrected by making the following correcting amendments:

PART 9301—[AMENDED]

■ 1. The authority citation for part 9301 continues to read as follows:

Authority: 5 U.S.C. 552; Pub. L. 110–175, 121 Stat. 2524 (2007); 5 U.S.C. 301 and 552; Exec. Order 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; Exec. Order No. 13392, 70 FR 75373–75377, 3 CFR, 2006 Comp., pp. 216–200.

■ 2. Section 9301.1 is revised to read as follows:

§ 9301.1 In general.

This information is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. This subpart should be read in conjunction with the FOIA. The Freedom of Information Act applies to third-party requests for documents concerning the general activities of the government and of SIGAR in particular. When a U.S. citizen or an individual lawfully admitted for permanent residence requests access to his or her own records, it is considered a Privacy Act request. Such records are maintained by SIGAR under the individual's name or personal identifier. Although requests are considered either FOIA requests for Privacy Act requests, agencies process requests in accordance with both laws, which provides the greatest degree of lawful access while safeguarding an individual's privacy.

■ 3. Section 9301.4 is revised to read as follows:

§ 9301.4 Availability of records.

SIGAR provides records to individual requesters in response to FOIA requests. Records that are required by the FOIA to be made available for public inspection and copying are accessible on SIGAR's Web site, *http://www.sigar.mil.* SIGAR will also identify records of interest to the public that are appropriate for public disclosure, and then post these records.

■ 4. Section 9301.6 is amended by revising paragraphs (c)(1) and (d) to read as follows:

§ 9301.6 Requesting records.

* * * * *

(c) *Response to requests*—(1) *Processing.* SIGAR will provide an individualized tracking number, and estimated date of completion, and a brief description of the subjects of the request in an acknowledgement letter to the requester. The FOIA Officer shall determine within 20 days (except Saturdays, Sundays, and federal holidays) after receiving a request for records, whether it is appropriate to grant or deny the request. The 20-day period may be tolled once if the FOIA Officer requests information from the requestor or if additional time is necessary to clarify issues with the requestor regarding a fee assessment.

(i) *Request granted.* If the FOIA Officer decides to grant the request, either in-full or in-part, the FOIA Officer shall promptly provide the requester written notice of the decision. The FOIA Officer shall include with the notice both the requested records and a copy of the decision. The notice shall also describe the procedure for filing an appeal.

(ii) *Request denied.* If the FOIA Officer denies the request, in full or part, the FOIA Officer shall provide the requester written notice of the denial together with the approximate number of pages of information withheld and the exemption under which the information was withheld. SIGAR will indicate, if technically feasible, the amount of information deleted and the exemption under which the deletion is made at the place in the record where the deletion was made. SIGAR will also indicate the exemption under which a deletion is made on the released portion of the record, unless including that indication would harm an interest protected by the exemptions. The notice

shall also describe the procedure for filing an appeal.

(iii) *Consultations and referrals:* When SIGAR receives a request for a record in its possession, it will determine whether another agency of the Federal Government, is better able to determine whether the record is exempt from disclosure under the FOIA and, if so, whether it should be disclosed as a matter of administrative discretion. If SIGAR determines that it is best able to process the record in response to the request, then it will do so. If SIGAR determines that it is not best able to process the record, then it will either:

(A) Respond to the request regarding that record, after consulting with the agency best able to determine whether to disclose it and with any other agency that has a substantial interest in it; or

(B) Refer the responsibility for responding to the request regarding that record to the agency that originated the record (but only if that agency is subject to the FOIA). Ordinarily, the agency that originated a record will be presumed to be best able to determine whether to disclose it.

* * * * *

(d) *Appeals*—(1) *Initiating appeals.* Requesters not satisfied with the FOIA Officer's written decision may request SIGAR's FOIA Appellate Authority to review the decision. Appeals must be delivered in writing within 60 days of the date of the decision and should be addressed to the FOIA Appellate Authority, Office of Privacy, Records & Disclosure, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202. As there may be delays in mail delivery, it is advisable to Fax appeals to (703) 601–3804 or email to *sigar.pentagon.gen-coun.mbx.foia@mail.mil.* An appeal shall include a statement specifying the records that are the subject of the appeal and explaining why the Appellate Authority should grant the appeal.

(2) *Appeal decisions.* The Appellate Authority shall decide the appeal within 20 days (except Saturdays, Sundays and federal holidays) from the date it receives the appeal. If the Appellate Authority denies the appeal in full or part, the Appellate Authority shall promptly notify the requester in writing of the Appellate Authority's decision and the provisions for judicial review. If the Appellate Authority grants the appeal, the FOIA Officer shall notify the requester in writing and shall make available to the requester copies of the releasable records once the requester pays any fees that SIGAR assesses under §§ 9301.8 through 9301.10.

(3) *Mediation.* A response to an appeal will advise the requester that the 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. A requester may contact OGIS in any of the following ways: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740; Email: *ogis@nara.gov;* Telephone: 202–741–5770; Facsimile: 202–741–5769; Toll-free: 1–877–684–6448.

■ 5. Section 9301.7 is revised as follows:

§ 9301.7 Definitions.

For purposes of this subpart:

(a) *Commercial use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers the requester's or other person's commercial, trade, or profit interests.

(b) *Direct costs* means those costs incurred in searching for and duplicating (and, in the case of commercial use requests, reviewing) documents to respond to a FOIA request. Direct costs include, for example, salaries of employees who perform the work and costs of conducting large-scale computer searches.

(c) *Duplicate* means to copy records to respond to a FOIA request. Copies can take the form of paper, audio-visual materials, or electronic records, among others.

(d) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, that operates a program or programs of scholarly research.

(e) *Fee category* means one of the three categories that agencies place requesters in for the purpose of determining whether a requester will be charged fees for search, review and duplication.

(f) *Fee waiver* means the waiver or reduction of processing fees if a requester can demonstrate that certain statutory standards are satisfied.

(g) *Non-commercial scientific institution* means an institution that is not operated on a commercial basis and that operates solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(h) *Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

(i) *Review* means to examine a record to determine whether any portion of the record may be withheld and to process a record for disclosure, including by redacting it.

(j) *Search for* means look for and retrieve records covered by a FOIA request, including by looking page-by-page or line-by-line to identify responsive material within individual records.

■ 6. Section 9301.8 is amended by revising the introductory text and paragraph (d) to read as follows:

§ 9301.8 Fees in general.

SIGAR shall charge reasonable fees that recoup the full allowable direct costs it incurs in responding to FOIA requests. SIGAR will provide an estimated amount of fees, including a breakdown of the fees for search, review, and/or duplication. SIGAR may assess charges for time spent searching for records even if SIGAR is unable to locate the records or if the records are located and determined to be exempt from disclosure. In general, SIGAR shall apply the following fee schedule, subject to §§ 9301.9 through 9301.11:

* * * * *

(d) *Duplication.* Fees for copying paper records or for printing electronic records shall be assessed at a rate of $.10 per page. For other types of copies such as disks or audio visual tapes, SIGAR shall charge the direct cost of producing the document(s). If duplication charges are expected to exceed $25, the FOIA Officer shall notify the requester, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated.

* * * * *

■ 7. Section 9301.10 is amended by revising paragraph (c) as follows:

§ 9301.10 Other charges.

* * * * *

(c) *Aggregating requests.* When the FOIA Officer reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests within a 30-day period for the purpose of avoiding fees, the FOIA Officer shall aggregate those requests and charge accordingly.

■ 8. Section 9301.11 is amended by revising paragraph (b) to read as follows:

§ 9301.11 Payment and waiver.

* * * * *

(b) *Waiver.* SIGAR may waive all or part of any fee provided for in §§ 9301.8 through 9301.9 when the FOIA Officer deems that as a matter of administrative discretion or disclosure of the information is in the general public's interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester. Requesters may request a waiver in their initial FOIA request letter. Requests for a fee waiver should explain how the information requested contributes to the public's understanding of the operations or activities of the government. In determining whether a fee should be waived, the FOIA Officer may consider whether:

(1) The subject matter specifically concerns identifiable operations or activities of the government;

(2) The information is already in the public domain;

(3) Disclosure of the information would contribute to the understanding of the public-at-large as opposed to a narrow segment of the population;

(4) Disclosure of the information would significantly enhance the public's understanding of the subject matter;

(5) Disclosure of the information would further a commercial interest of the requester; and

(6) The public's interest is greater than any commercial interest of the requester.

Dated: June 21, 2012.

Steven J. Trent,

Acting Inspector General, Special Inspector General for Afghanistan Reconstruction.

[FR Doc. 2012–15665 Filed 6–26–12; 8:45 am]

BILLING CODE 3710–L9–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 20

[Docket No. FDA–2012–N–0205]

Agreements and Memoranda of Understanding Between the Food and Drug Administration and Other Departments, Agencies, and Organizations; Withdrawal

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) published in the **Federal Register** of March 23, 2012 (77 FR 16923), a direct final rule making technical changes to update a requirement that many of its written agreements and memoranda of understanding with other departments, Agencies, and organizations be published in the **Federal Register.** The comment period closed June 6, 2012. FDA is withdrawing the direct final rule because the Agency received significant adverse comment.

DATES: The direct final rule published at 77 FR 16923, March 23, 2012, is withdrawn, effective June 27, 2012.

FOR FURTHER INFORMATION CONTACT: Daniel W. Sigelman, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–4706, FAX: 301–847–8616, email: *daniel.sigelman@fda.hhs.gov.*

Authority: Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, the direct final rule published in the **Federal Register** on March 23, 2012 (77 FR 16923) is withdrawn.

Dated: June 22, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–15713 Filed 6–26–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 570

Child Labor Regulations, Orders and Statements of Interpretation

CFR Correction

■ In Title 29 of the Code of Federal Regulations, Parts 500 to 899, revised as of July 1, 2011, on page 302, the section heading for § 570.65 is corrected to read as follows:

§ 570.65 [CORRECTED]

§ 570.65 Occupations involving the operation of circular saws, band saws, guillotine shears, chain saws, reciprocating saws, wood chippers, and abrasive cutting discs (Order 14).

[FR Doc. 2012–15868 Filed 6–26–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD–2011–HA–0007]

RIN 0720–AB43

TRICARE Reimbursement Revisions

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule provides several necessary revisions to the regulation in order for TRICARE to be consistent with Medicare. These revisions affect: Hospice periods of care; reimbursement of physician assistants and assistant-at-surgery claims; and diagnosis-related group values, removing references to specific numeric diagnosis-related group values and replacing them with their narrative description.

DATES: *Effective Date:* This rule is effective July 27, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Ann N. Fazzini, TRICARE Management Activity, Medical Benefits and Reimbursement Systems, telephone (303) 676–3803.

SUPPLEMENTARY INFORMATION:

Background

I. Hospice

This final rule revises the regulation for hospice periods of care. The Defense Authorization Act for FY 1992–1993, Public Law 102–190, directed TRICARE to provide hospice care in the manner and under the conditions provided in section 1861(dd) of the Social Security Act (42 U.S.C. 1395x(dd)). Congress' intent was for TRICARE to establish a benefit in the same manner as Medicare. TRICARE originally had the same periods of hospice care used by Medicare; however, over time the Medicare benefit changed, but TRICARE's regulation has not. The TRICARE regulation currently provides for an initial period of 90 days, a subsequent period of 90 days, a second subsequent period of 30 days, and a final period of unlimited duration. Rather than maintaining this level of specificity in the regulation and to ensure that TRICARE and Medicare's benefit periods are equal, we are revising the regulation to state that the distinct periods of care available under the hospice benefit shall be the same as those offered under Medicare's hospice program. Currently under Medicare, patients are entitled to two 90-day

election periods, followed by an unlimited number of 60-day periods. The level of specific benefits shall be included in the TRICARE Reimbursement Manual, and may be accessed at *www.tricare.mil*.

II. Physician Assistants and Assistant-at-Surgery

The current regulatory language references specific reimbursement percentages for assistant-at-surgery reimbursement. Rather than including these specific percentage amounts, which would require a regulatory change any time the percentage amounts change, we are making a general statement referring to the current percentages used by Medicare. Our authority for this is 10 U.S.C. 1079(h) which states: Except as provided in paragraphs (2) and (3), payment for a charge for services by an individual health care professional (or other noninstitutional health care provider) for which a claim is submitted under a plan contracted for under subsection (a) shall be equal to an amount determined to be appropriate, to the extent practicable, in accordance with the same reimbursement rules as apply to payments for similar services under title XVIII of the Social Security Act (42 U.S.C. 1395 *et seq.*). The Secretary of Defense shall determine the appropriate payment amount under this paragraph in consultation with the other administering Secretaries. The specific percentages are more appropriately included in the TRICARE Reimbursement Manual, and may be accessed at *www.tricare.mil*.

III. DRG

10 U.S.C. 1079(j)(2) provides that the amount to be paid to a provider of services for services provided under a plan covered by this section shall be determined under joint regulations to be prescribed by the administering Secretaries which provide that the amount of such payments shall be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under title XVIII of the Social Security Act (42 U.S.C. 1395 *et seq.*).

In accordance with the above statute, the TRICARE/CHAMPUS DRG-based payment system transitioned to adopting the Medicare Severity-DRG based payment system on October 1, 2008. When TRICARE transitioned to the severity-based system, it was necessary to renumber the existing DRGs, and to assign different narrative descriptions to the DRG numbers. As a result, the existing regulatory reference to specific DRG numbers and descriptions became obsolete, so we are removing the numeric references in the regulation and utilizing only the descriptive terminology.

Public Comments

A proposed rule was published on January 13, 2011 (76 FR 2291). Two sets of comments were received on the proposed rule. One commenter supported the proposed rule and urged the DoD to make it final. The other commenter concurred with the reimbursement changes in the proposed rule, but expressed concern that current TRICARE policy does not cover mental and behavioral services when delivered by a physician assistant (PA). They stated that PAs are qualified health care professionals who are authorized by state law to provide a wide range of behavioral health services to patients in all settings.

We appreciate the commenter's interest in TRICARE's behavioral health care services. TRICARE offers a robust behavioral health care program and allows care by qualified mental health providers, as listed in 32 CFR 199.4 as follows: Psychiatrists or other physicians; clinical psychologists, certified psychiatric nurse specialists, clinical social workers, and certified marriage and family therapists; and pastoral and mental health counselors under a physician's supervision. TRICARE views these professionals as qualified behavioral health services providers with the specialized training to ensure quality of care to our beneficiaries. Consequently, we have no plans to expand coverage to allow behavioral health services by PAs.

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Section 801 of title 5, United States Code, and Executive Orders (E.O.) 12866 and 13563 require certain regulatory assessments and procedures for any major rule or significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. It has been certified that this rule is not economically significant. It has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866 and 13563.

Public Law 104–4, Section 202, ''Unfunded Mandates Reform Act''

Section 202 of Public Law 104–4, ''Unfunded Mandates Reform Act,'' requires that an analysis be performed to determine whether any federal mandate may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of $100 million in any one year. It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year, and thus this final rule is not subject to this requirement.

Public Law 96–354, ''Regulatory Flexibility Act'' (RFA) (5 U.S.C. 601)

Public Law 96–354, ''Regulatory Flexibility Act'' (RFA) (5 U.S.C. 601), requires that each Federal agency prepare a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This final rule is not an economically significant regulatory action, and it has been certified that it will not have a significant impact on a substantial number of small entities. Therefore, this final rule is not subject to the requirements of the RFA.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapters 35)

This final rule does not contain a ''collection of information'' requirement, and will not impose additional information collection requirements on the public under Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35).

Executive Order 13132, ''Federalism''

E.O. 13132, ''Federalism,'' requires that an impact analysis be performed to determine whether the rule has federalism implications that would have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. It has been certified that this final rule does not have federalism implications, as set forth in E.O. 13132.

List of Subjects in 32 CFR part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.4 is amended by revising paragraph (e)(19)(v) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(19) * * *

(v) *Periods of care.* Hospice care is divided into distinct periods of care. The periods of care that may be elected by the terminally ill CHAMPUS beneficiary shall be as the Director, TRICARE determines to be appropriate, but shall not be less than those offered under Medicare's Hospice Program.

* * * * *

■ 3. Section 199.14 is amended by revising paragraphs (a)(1)(ii)(C)(*3*), (a)(1)(iii)(A)(*2*), and (j)(1)(ix) to read as follows:

§ 199.14 Provider reimbursement methods.

* * * * *

(a) * * *

(1) * * *

(ii) * * *

(C) * * *

(*3*) All services related to heart and liver transplantation for admissions prior to October 1, 1998, which would otherwise be paid under the respective DRG.

* * * * *

(iii) * * *

(A) * * *

(*2*) Remove DRGs. Those DRGs that represent discharges with invalid data or diagnoses insufficient for DRG assignment purposes are removed from the database.

* * * * *

(j) * * *

(1) * * *

(ix) The allowable charge for physician assistant services other than assistant-at-surgery shall be at the same percentage, used by Medicare, of the allowable charge for a comparable service rendered by a physician performing the service in a similar location. For cases in which the physician assistant and the physician perform component services of a procedure other than assistant-at-surgery (e.g., home, office, or hospital visit), the combined allowable charge for the procedure may not exceed the allowable charge for the procedure rendered by a physician alone. The allowable charge for physician assistant services performed as an assistant-at-surgery shall be at the same percentage, used by Medicare, of the allowable charge for a physician serving as an assistant surgeon when authorized as CHAMPUS benefits in accordance with the provisions of § 199.4(c)(3)(iii). Physician assistant services must be billed through the employing physician who must be an authorized CHAMPUS provider.

* * * * *

Dated: June 20, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–15509 Filed 6–26–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD–2011–HA–0058]

RIN 0720–AB51

TRICARE; Constructive Eligibility for TRICARE Benefits of Certain Persons Otherwise Ineligible Under Retroactive Determination of Entitlement to Medicare Part A Hospital Insurance Benefits

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department is publishing this final rule to implement section 706 of the National Defense Authorization Act (NDAA) for Fiscal Year 2010, Public Law 111–84. Specifically, section 706 exempts TRICARE beneficiaries under the age of 65 who become disabled from the requirement to enroll in Medicare Part B for the retroactive months of entitlement to Medicare Part A in order to maintain TRICARE coverage. This statutory amendment and final rule only impact eligibility for the period in which the beneficiary's disability determination is pending before the Social Security Administration. Eligible beneficiaries are still required to enroll in Medicare Part B in order to maintain their TRICARE coverage for future months, but are considered to have coverage under the TRICARE program for the retroactive months of their entitlement to Medicare Part A. This final rule also amends the eligibility section of the TRICARE regulation to more clearly address reinstatement of TRICARE eligibility following a gap in coverage due to lack of enrollment in Medicare Part B.

DATES: *Effective Date:* This final rule is effective July 27, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Breslin, TRICARE Operations Branch, TRICARE Management Activity (TMA), 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041, telephone (703) 681–0039.

SUPPLEMENTARY INFORMATION:

I. Background

Prior to the enactment of section 706 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84), 10 U.S.C. 1086(d) provided that a person who would otherwise receive benefits under section 1086 who is entitled to Medicare Part A hospital insurance is not eligible for TRICARE unless the individual is enrolled in Medicare Part B. When a TRICARE beneficiary becomes eligible for Medicare, Medicare becomes the primary payer and TRICARE is the secondary payer. Retroactive Medicare eligibility determinations therefore caused DoD and Medicare to reprocess claims. Section 706 of the Fiscal Year 2010 National Defense Authorization Act amended 10 U.S.C. 1086(d) to exempt TRICARE beneficiaries under the age of 65 who became Medicare eligible due to a retroactive disability determination from the requirement to enroll in Medicare Part B for the retroactive months of entitlement to Medicare Part A in order to maintain TRICARE coverage. This statutory amendment became effective upon enactment of the Fiscal Year 2010 National Defense Authorization Act on October 28, 2009. Prior to this amendment, beneficiaries who did not purchase Medicare Part B to cover the retroactive period lost their TRICARE eligibility during that period of time. As a result, beneficiaries and providers were then subject to TRICARE recoupment action for care provided during the period of retroactive disability. Pursuant to this amendment, TRICARE remains first payer for any claims filed during the retroactive months and disabled TRICARE beneficiaries are relieved of the financial burden of making retroactive payments to avoid a gap in coverage. This final rule amends the Code of Federal Regulations to conform to current statutory authority regarding TRICARE eligibility.

Additionally, due to an earlier administrative omission, this final rule also amends 32 CFR 199.3 to more clearly address reinstatement of TRICARE eligibility following a gap in coverage due to lack of enrollment in Part B. While most TRICARE

beneficiaries who become eligible for Medicare Part A maintain TRICARE coverage through prompt acceptance of Part B coverage, there are a number of beneficiaries that for one reason or another decline Part B and lose their TRICARE eligibility. For those individuals, they can have that eligibility reinstated at a later date if they re-enroll in Part B. This final rule amends the section on reinstatement of TRICARE eligibility to include beneficiaries who elect to enroll in Medicare Part B following a gap in TRICARE coverage.

II. Public Comments

We provided a 60-day public comment period following publication of the Proposed Rule in the **Federal Register** (76 FR 58204–58206) on September 20, 2011. We received no public comments.

III. Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review''; Executive Order 13563, ''Improving Regulation and Regulatory Review''; and Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

Executive Orders 12866 and 13563 require that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This rule is not an economically significant regulatory action and will not have a significant impact on a substantial number of small entities for purposes of the RFA, thus this final rule is not subject to any of these requirements.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511)

This rule will not impose additional information collection requirements on the public. OMB previously cleared the collection requirements under OMB Control Number 0704–0364.

Executive Order 13132, ''Federalism''

We have examined the impact(s) of the rule under Executive Order 13132, and it does not have policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, therefore, consultation with State and local officials is not required.

Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

This rule does not contain unfunded mandates. It does not contain a Federal mandate that may result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.3 is amended by:
■ a. Adding paragraph (f)(2)(iii);
■ b. Revising paragraph (f)(3)(ix)(C); and
■ c. Adding paragraph (g)(3) to read as follows:

§ 199.3 Eligibility.

* * * * *

(f) * * *

(2) * * *

(iii) Attainment of entitlement to hospital insurance benefits (Part A) under Medicare except as provided in paragraphs (b)(3), (f)(3)(vii), (f)(3)(viii) and (f)(3)(ix) of this section.

(3) * * *

(ix) * * *

(C) The individual is enrolled in Part B of Medicare except that in the case of a retroactive determination of entitlement to Medicare Part A hospital insurance benefits for a person under 65 years of age there is no requirement to enroll in Medicare Part B from the Medicare Part A entitlement date until the issuance of such retroactive determination; and

* * * * *

(g) * * *

(3) *Enrollment in Medicare Part B.* For individuals whose CHAMPUS eligibility has terminated pursuant to paragraph (f)(2)(iii) or (f)(3)(vi) of this section due to beneficiary action to decline Part B of Medicare, CHAMPUS eligibility resumes, effective on the date Medicare Part B coverage begins, if the person subsequently enrolls in Medicare Part B and the person is otherwise still eligible.

■ 3. Section 199.8 is amended by:
■ a. Revising paragraph (d)(1)(i);
■ b. Redesignating paragraphs (d)(1)(vi), (d)(1)(vii) and (d)(1)(viii) as (d)(1)(vii), (d)(1)(viii), and (d)(1)(ix) respectively; and
■ c. Adding new paragraph (d)(1)(vi) to read as follows.

§ 199.8 Double coverage.

* * * * *

(d) * * *

(1) * * *

(i) *General rule.* In any case in which a beneficiary is eligible for both Medicare and CHAMPUS received medical or dental care for which payment may be made under Medicare and CHAMPUS, Medicare is always the primary payer except in the case of retroactive determinations of disability as provided in paragraph (d)(1)(v) of this section. For dependents of active duty members, payment will be determined in accordance to paragraph (c) of this section. For all other beneficiaries eligible for Medicare, the amount payable under CHAMPUS shall be the amount of actual out-of-pocket costs incurred by the beneficiary for that care over the sum of the amount paid for that care under Medicare and the total of all amounts paid or payable by third party payers other than Medicare.

* * * * *

(vi) *Retroactive determinations of disability.* In circumstances involving determinations of retroactive Medicare Part A entitlement for persons under 65 years of age, Medicare becomes the primary payer effective as of the date of issuance of the retroactive determination by the Social Security Administration. For care and services rendered prior to issuance of the retroactive determination, the CHAMPUS payment will be determined consistent with paragraph (d)(1)(iii)(B) of this section notwithstanding the beneficiary's retroactive entitlement for Medicare Part A during that period.

* * * * *

■ 4. Section 199.11 is amended by revising paragraph (f)(3) to read as follows:

§ 199.11 Overpayments recovery.

* * * * *

(f) * * *

(3) Claims arising from erroneous TRICARE payments in situations where the beneficiary has entitlement to an insurance, medical service, health and medical plan, including any plan offered by a third party payer as defined in 10 U.S.C. 1095(h)(1) or other government program, except in the case of a plan administered under Title XIX

of the Social Security Act (42 U.S.C. 1396, *et seq.*) through employment, by law, through membership in an organization, or as a student, or through the purchase of a private insurance or health plan, shall be recouped following the procedures in paragraph (f) of this section. If the other plan has not made payment to the beneficiary or provider, the contractor shall first attempt to recover the overpayment from the other plan through the contractor's coordination of benefits procedures. If the overpayment cannot be recovered from the other plan, or if the other plan has made payment, the overpayment will be recovered from the party that received the erroneous payment from TRICARE. Nothing in this section shall be construed to require recoupment from any sponsor, beneficiary, provider, supplier and/or the Medicare Program under Title XVIII of the Social Security Act in the event of a retroactive determination of entitlement to SSDI and Medicare Part A coverage made by the Social Security Administration as discussed in § 199.8(d) of this part.

* * * * *

Dated: June 20, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–15508 Filed 6–26–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD–2008–HA–0090]

RIN 0720–AB23

TRICARE; Off-Label Uses of Devices; Partial List of Examples of Unproven Drugs, Devices, Medical Treatments, or Procedures

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Department of Defense is publishing this final rule to revise the definition of ''unlabeled or off-label drug'' to ''off-label use of a drug or device.'' This provision codifies the coverage of those medically necessary indications for which there are demonstrations from medical literature, national organizations, or technology assessment bodies that the off-label use is safe and effective and in accordance with nationally accepted standards of practice in the medical community. Additionally, this rule removes the partial list of examples of unproven drugs, devices, and medical treatments or procedures proscribed in TRICARE regulations. We are removing the partial list from the regulation but will maintain the partial list in the TRICARE Policy Manual at www.tricare.mil.

DATES: *Effective Date:* This rule is effective July 27, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Elan Green, TRICARE Management Activity, Medical Benefits and Reimbursement Branch, telephone (303) 676–3907.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 31, 2009 (74 FR 44797–44798), the Office of the Secretary of Defense published for public comment a proposed rule that revised the definition of ''unlabeled or off-label drug'' to ''off-label use of a drug or device.'' In addition this proposed rule removed the partial list of examples of unproven drugs, devices, and medical treatments or procedures proscribed under Section 199.4(g)(15).

Off-Label Uses of Devices

On January 6, 1997, the Office of the Secretary of Defense published a final rule in the **Federal Register** (62 FR 627–631) clarifying the TRICARE exclusion of unproven drugs, devices, and medical treatments or procedures and adding the TRICARE definition of unlabeled or off-label drugs. This rule also added the provision for coverage of unlabeled or off-label uses of drugs that are Food and Drug Administration (FDA) approved drugs that are prescribed or administered by a health care practitioner and are used for indications or treatments not included in the approved labeling. We are now modifying the definition of ''unlabeled or off-label drug'' to ''off-label use of a drug or device,'' which includes a drug, biologic or device under the regulatory authority of the FDA. However, this proposed rule does not present new agency policy. Rather, it corrects an error and omission from the current rule. Coverage is limited to those indications for which there are demonstrations from medical literature, national organizations, or technology assessment bodies that the off-label use is safe and effective and in accordance with nationally accepted standards of practice in the medical community. In addition, the off-label use must be reviewed for medical necessity.

In general, good medical practice and the best interests of the patient require that physicians use legally available drugs, biologics, and devices, including combination products, according to their best knowledge and judgment. When providers use a product for an indication not in the approved labeling, they have a responsibility to be well informed about the product, to base its use on firm scientific rationale and on sound medical evidence. Limiting CHAMPUS cost-sharing to those off-label uses for which there are demonstrations from medical literature, national organizations, or technology assessment bodies that the off-label use is safe, effective, and in accordance with nationally accepted standards of practice in the medical community will help to ensure there is sufficient scientific evidence supporting the off-label use, without being overly onerous, while still promoting innovations in medical practice that benefit patients.

In reviewing the proposed rule, we discovered that we had inadvertently incorporated the TRICARE reliable evidence standard (as defined in 32 CFR 199.2) as the threshold for reviewing coverage for off-label or unlabeled use. The intent was not to make the standard of review more onerous but rather to expand the application of the existing provision regarding the cost-sharing of off-label use of drugs to also include the off-label use of devices and biologics. As a result, we are withdrawing the changes to the third paragraph of the Note to paragraph (g)(15)(i)(A) in section 199.4 with the exception of replacing the term ''unlabeled or off-label uses of drugs'' with ''off-label uses of drugs and devices,'' with an appropriate reference back to the definition of the term in 199.2. ''Off-label uses of drugs and devices'' includes off-label uses of drugs, biologics, devices, and combination products.

Although most biological products meet the definition of ''drugs'' under the Federal Food, Drug and Cosmetic Act, and are also regulated under that law, biological products are approved for marketing under the Public Health Services Act by means of a biologics license application. Thus, the definition of ''off-label use of a drug or device'' has been revised to acknowledge both the Federal Food, Drug and Cosmetic Act and the Public Health Services Act as sources of the FDA's regulatory authority over the marketing of these products.

Partial List of Examples of Unproven Drugs, Devices, and Medical Treatments or Procedures

By law, TRICARE can cost-share only medically necessary supplies and services. Any drug, device, and medical treatment or procedure, the safety and efficacy of which have not been

established, as described in Part 199.4(g)(15), is unproven and cannot be cost-shared by TRICARE except as authorized under paragraph 199.4(e)(26). The current regulation and program policy provide a partial list of examples of unproven drugs, devices, and medical treatments or procedures that are excluded from benefits. The intent of this partial list was to provide information on specific examples of emerging drugs, devices, and medical treatments or procedures determined to be unproven by TRICARE based on review of current reliable evidence. Due to the rapid and extensive changes in medical technology it is not feasible to maintain this list in the regulation. Removal of this partial list of examples does not change the exclusion of unproven drugs, devices, and medical treatments or procedures. Removal of the partial list of examples does not change the process TRICARE follows in determining for purposes of benefit coverage when a drug, device, and medical treatment or procedure has moved from the status of unproven to proven medical effectiveness. The intent of this revision is to ensure that benefit determinations are made based on current reliable evidence rather than relying on outdated regulatory and policy provisions. A partial list of unproven drugs, devices, medical treatments, or procedures will continue to be published in the TRICARE Policy Manual at *www.tricare.mil.*

II. Public Comments

We provided a 60-day public comment period following publication of the Proposed Rule in the **Federal Register** (74 FR 44797–44798) on August 31, 2009. We received no public comments.

III. Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Section 801 of title 5, United States Code, and Executive Orders 12866 and 13563 require certain regulatory assessments and procedures for any major rule or significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. It has been certified that this rule is not an economically significant rule; however, it is a regulatory action which has been reviewed by the Office of Management and Budget as required under the provisions of EOs 12866 and 13563.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

Section 202 of Public Law 104–4, ''Unfunded Mandates Reform Act,'' requires that an analysis be performed to determine whether any federal mandate may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of $100 million in any one year. It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

The ''Regulatory Flexibility Act'' (RFA) requires each Federal agency to prepare and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This rule will not significantly impact a substantial number of small entities for purposes of the RFA.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

Executive Order 13132, ''Federalism''

This rule has been examined for its impact under E.O. 13132 and does not contain policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government; therefore, consultation with the State and local officials is not required.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.2(b) is amended by removing the definition of ''Unlabeled or Off-label drugs'' and adding a new definition of ''Off-label use of a drug or device'' in alphabetical order to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

* * * * *

Off-label use of a drug or device. A use other than an intended use for which the prescription drug, biologic or device is legally marketed under the Federal Food, Drug, and Cosmetic Act or the Public Health Services Act. This includes any use that is not included in the approved labeling for an approved drug, licensed biologic, approved device or combination product; any use that is not included in the cleared statement of intended use for a device that has been determined by the Food and Drug Administration (FDA) to be substantially equivalent to a legally marketed predicate device and cleared for marketing; and any use of a device for which a manufacturer or distributor would be required to seek pre-market review by the FDA in order to legally include that use in the device's labeling.

* * * * *

■ 3. Section 199.4 is amended by revising the third paragraph of the Note to paragraph (g)(15)(i)(A), and removing paragraph (g)(15)(iv) as follows:

§ 199.4 Basic program benefits.

* * * * *

(g) * * *

(15) * * *

(i) * * *

(A) * * *

Note: * * *

CHAMPUS will consider coverage of off-label uses of drugs and devices that meet the definition of Off-Label Use of a Drug or Device in § 199.2(b). Approval for reimbursement of off-label uses requires review for medical necessity and also requires demonstrations from medical literature, national organizations, or technology assessment bodies that the off-label use of the drug or device is safe, effective, and in accordance with nationally accepted standards of practice in the medical community.

* * * * *

Dated: June 20, 2012.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–15510 Filed 6–26–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0063]

Safety Zones; Annual Firework Displays 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 safety zones for annual firework displays in the Captain of the Port, Puget Sound area of responsibility during the dates and times noted below. This action is necessary to prevent injury and to protect life and property of the maritime public from the hazards associated with the firework displays. During the enforcement periods, entry into, transit through, mooring, or anchoring within these zones is prohibited unless authorized by the Captain of the Port, Puget Sound or his Designated Representative.

DATES: The regulations in 33 CFR 165.1332 for the events described below will be enforced from 5 p.m. on July 4, 2012 to 1 a.m. on July 5, 2012.

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

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones established for Annual Fireworks Displays within the Captain of the Port, Puget Sound Area of Responsibility in 33 CFR 165.1332 during the dates and times noted below.

The following safety zones will be enforced from 5 p.m. on July 4, 2012 through 1 a.m. on July 5, 2012.

Event name	Location	Latitude	Longitude	Radius (yds)
Blast Over Bellingham	Bellingham Bay	48°44.933′ N	122°29.667′ W	300
Roche Harbor Fireworks	Roche Harbor	48°36.700′ N	123°09.500′ W	150
Fireworks Display	Henderson Bay	47°21.800′ N	122°38.367′ W	250

The special requirements listed in 33 CFR 165.1332(b), which can also be found in the **Federal Register** (75 FR 33700) published on June 15, 2010, apply to the activation and enforcement of these safety zones.

All vessel operators who desire to enter any of the safety zones must obtain permission from the Captain of the Port or his Designated Representative by contacting either the on-scene patrol craft on VHF Ch 13 or Ch 16 or the Coast Guard Sector Puget Sound Joint Harbor Operations Center (JHOC) via telephone at (206) 217–6002.

The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR part 165 and 5 U.S.C. 552(a). In addition to this notice, the Coast Guard will provide the maritime community with extensive advance notification of the safety zones via the Local Notice to Mariners and marine information broadcasts on the days of the events.

Dated: June 14, 2012.

S.J. Ferguson,

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

[FR Doc. 2012–15639 Filed 6–26–12; 8:45 am]

BILLING CODE 9110–04–P

NATIONAL INSTITUTE FOR LITERACY

34 CFR Ch. XI, Part 1100

NATIONAL COUNCIL ON DISABILITY

34 CFR Ch. XII, Part 1200

Subtitle C, Regulations Relating to Education

CFR Correction

In Title 34 of the Code of Federal Regulations, Part 680 to End, revised as of July 1, 2011, on page 395, the heading ''Subtitle C—Regulations Relating to Education'' is added above chapter XI—National Institute for Literacy. In title 34, chapters XI and XII are designated under subtitle C.

[FR Doc. 2012–15881 Filed 6–26–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AO03

Autopsies at VA Expense

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulation that governs the performance of autopsies on veterans. This final rule updates outdated cross-references to a statute that previously authorized certain outpatient and ambulatory care, which included post-hospitalization autopsies, and its implementing regulation. This final rule clarifies that consent for an autopsy is implied if a known surviving spouse or next of kin has either not responded to a VA request for permission or has not inquired as to the decedent for 6 months before the decedent's death. This final rule modifies the current regulation to make the laws of the jurisdiction in which the autopsy will be performed the controlling laws for purposes of determining who has authority to grant permission for the autopsy. This final rule also clarifies the authorized purposes of a VA autopsy. Lastly, this final rule clarifies that the authority to order an autopsy includes transporting the body at VA's expense to the place where the autopsy will be performed.

DATES: This final rule is effective July 27, 2012.

FOR FURTHER INFORMATION CONTACT: Kristin J. Cunningham, Director, Business Policy, Chief Business Office, Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420; (202) 461–1599. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Prior to this final rulemaking, 38 CFR 17.170 stated that under certain specified circumstances, ''[t]he Director of a [VA] facility is authorized to cause an autopsy to be performed on a veteran who dies outside of a [VA] facility while undergoing post-hospital care under the provisions of 38 U.S.C. 1712 and 38 CFR 17.93.'' These cross-references are outdated and incomplete. Post-hospital

care is now governed by section 1710, not section 1712, and the implementing regulation is now at 38 CFR 17.38. In addition, VA is authorized, under § 17.52, to contract with non-VA facilities to furnish hospital care and medical services to certain veterans in non-VA facilities. This final rule updates the cross-references in § 17.170 to allow VA to order an autopsy of an individual who dies while receiving fee-basis care under § 17.52 and to pay the expense of transporting the body for purposes of performing the autopsy.

This final rule also amends § 17.170 by reorganizing and clarifying the provisions governing whether an autopsy should be performed, including clarifying the applicability of local laws and the determination of the individual authorized to consent to autopsy. This clarifying language allows for ease of interpretation of the methods used to obtain consent for autopsy.

In a document published in the **Federal Register** on December 2, 2011 (76 FR 75509), VA proposed the above-described amendments to § 17.170. We provided a 60 day comment period, which ended on January 31, 2012. We received one comment from a member of the general public.

The commenter agreed with all of the proposals. Therefore, VA will make no changes based on this comment. The commenter stated that ''[w]hen an autopsy is required for this purpose it is necessary to complete it in a timely fashion. Simplifying the language will help to achieve this goal by clarifying which laws to consult, addressing the requirements needed to achieve consent, and stating clearly the limitations on time.'' We thank the commenter for taking the time to review this rulemaking.

Based on the rationale set forth in the preamble to the proposed rule and in this final rule, VA is adopting the proposed rule as a final rule without any substantive changes. We made a couple of nonsubstantive edits to proposed § 17.170(a)(1).

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Unfunded Mandates

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

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

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

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will not cause a significant economic impact on health care providers, suppliers, or entities since only a small portion of the business of such entities concerns VA beneficiaries. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers and titles for this final rule are as follows: 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on June 21, 2012, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure; Alcohol abuse; Alcoholism; Claims; Day care; Dental health; Drug abuse; Government contracts; Grant programs—health; Grant programs—veterans; Health care; Health facilities; Health professions; Health records; Homeless; Mental health programs; Nursing homes; Philippines; Reporting and recordkeeping requirements; Veterans.

Dated: June 21, 2012.

Robert C. McFetridge,

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

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 17 as follows:

PART 17—MEDICAL

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

Authority: 38 U.S.C. 501, and as noted in specific sections.

■ 2. Amend § 17.170 by:
■ a. Revising paragraph (a).
■ b. Removing paragraph (b).
■ c. Redesignating paragraph (c) as new paragraph (b) and adding a paragraph heading.
■ d. Redesignating paragraph (d) as new paragraph (c) and adding a paragraph heading.
■ e. In newly redesignated paragraph (c), removing ''paragraph (c)'' each time it appears and adding, in its place, ''paragraph (b)''.
■ f. Redesignating paragraph (e) as new paragraph (d) and revising newly redesignated paragraph (d).
■ g. Redesignating paragraph (f) as new paragraph (e) and revising newly redesignated paragraph (e).
■ h. Adding an authority citation at the end of the section.

The revisions and additions read as follows:

§ 17.170 Autopsies.

(a) *General.* (1) Except as otherwise provided in this section, the Director of a VA facility may order an autopsy on a decedent who died while undergoing VA care authorized by § 17.38 or § 17.52, if the Director determines that an autopsy is required for VA purposes for the following reasons:

(i) Completion of official records; or

(ii) Advancement of medical knowledge.

(2) VA may order an autopsy to be performed only if consent is first obtained under one of the following circumstances:

(i) Consent is granted by the surviving spouse or next of kin of the decedent;

(ii) Consent is implied where a known surviving spouse or next of kin does not respond within a specified period of time to VA's request for permission to conduct an autopsy;

(iii) Consent is implied where a known surviving spouse or next of kin does not inquire after the well-being of the deceased veteran for a period of at least 6 months before the date of the veteran's death; or

(iv) Consent is implied where there is no known surviving spouse or next of kin of the deceased veteran.

(b) *Death resulting from crime.* * * *

(c) *Jurisdiction.* * * *

(d) *Applicable law.* (1) The laws of the state where the autopsy will be performed are to be used to identify the person who is authorized to grant VA permission to perform the autopsy and, if more than one person is identified, the order of precedence among such persons.

(2) When the next of kin, as defined by the laws of the state where the autopsy will be performed, consists of a number of persons such as children, parents, brothers and sisters, etc., permission to perform an autopsy may be accepted when granted by the person in the appropriate class who assumes the right and duty of burial.

(e) *Death outside a VA facility.* The Director of a VA facility may order an autopsy on a veteran who was undergoing VA care authorized by §§ 17.38 or 17.52, and whose death did not occur in a VA facility. Such authority also includes transporting the body at VA's expense to the facility where the autopsy will be performed, and the return of the body. Consent for the autopsy will be obtained as stated in paragraph (d) of this section. The Director must determine that such autopsy is reasonably required for VA purposes for the following reasons:

(1) The completion of official records; or

(2) Advancement of medical knowledge.

Authority: 38 U.S.C. 501, 1703, 1710.

[FR Doc. 2012–15624 Filed 6–26–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 74

RIN 2900–AO49

VA Veteran-Owned Small Business Verification Guidelines

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: This document implements a portion of the Veterans Benefits, Health Care, and Information Technology Act of 2006, which requires the Department of Veterans Affairs (VA) to verify ownership and control of veteran-owned small businesses (VOSBs), including service-disabled veteran-owned small businesses (SDVOSBs) in order for these firms to participate in VA acquisitions set-aside for SDVOSB/VOSBs. This interim final rule contains a minor revision to require re-verification of SDVOSB/VOSB status only every two years rather than annually. The purpose of this change is to reduce the administrative burden on SDVOSB/VOSBs regarding participation in VA acquisitions set asides for these types of firms.

DATES: *Effective date:* June 27, 2012.

Comment date: Comments must be received on or before August 27, 2012.

ADDRESSES: Written comments may be submitted by: mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or email through *http://www.Regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AO49—VA Veteran-Owned Small Business Verification Guidelines.'' All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Michelle Gardner-Ince, Director, Center for Veterans Enterprise (00VE), Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420, phone (202) 303–3260 x5237.

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** on February 8, 2010, (73 FR 6098), VA established new 38 CFR part 74 setting forth a mechanism for verifying ownership and control of VOSBs, including SDVOSBs. At that time, with respect to 38 CFR 74.15, VA anticipated that annual examinations were necessary to ensure the integrity of the Verification Program. This was deemed consistent with the annual Federal size and status recertification requirement in the Central Contractor Registry.

In administering this program since February 2010, VA has concluded that an annual examination is not necessary to adequately maintain the integrity of the program and proposes a 2-year eligibility period. This change is appropriate because VA conducts a robust examination of personal and company documentation to verify ownership and control by Veterans of applicant businesses. In addition to verifying individual owners' service-disabled veteran status or veteran status, in accordance with 38 CFR 74.20(b), VA reviews an applicant's financial statements; Federal personal and business tax returns; personal history

statements; articles of incorporation/organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; State-issued certificates of good standing; contract, lease and loan agreements; payroll records; bank account signature cards; and licenses. Given the depth of this review, annual re-verification examinations have become an unnecessary administrative burden on both applicants/participants and VA.

Given this extensive initial examination, VA is confident that the integrity of the verification program will not be compromised by establishing a 2-year eligibility period. Other integrity aspects of the program remain adequate to oversee a 2-year eligibility period. Once verified, 38 CFR 74.15(a) mandates that the participant must maintain its eligibility during its tenure and, if ownership or control changes occur, must inform VA's Center for Veterans Enterprise (CVE) of any changes that would adversely affect its eligibility. Moreover, in accordance with 38 CFR part 74.20(a), VA has the right to conduct random, unannounced site examinations of participants or to conduct a further examination upon receipt of specific and credible information that a participant is no longer eligible. Lastly, in the course of specific SDVOSB/VOSB set-aside acquisitions, VA contracting officers and also competing SDVOSB/VOSBs have the right to raise a SDVOSB/VOSB status protest to VA's Office of Small and Disadvantaged Business Utilization (OSDBU) if either has a reasonable basis upon which to challenge the SDVOSB/VOSB status of a verified firm.

Establishment of a longer, 2-year eligibility period is consistent with other Federal set-aside programs. With respect to the Historically Underutilized Business Zone (HUBZone) small business certification program, U.S. Small Business Administration (SBA) regulations at 13 CFR 126.500 require that any qualified HUBZone small business concern seeking to remain on the HUBZone approved list must recertify every 3 years with SBA. With regard to SBA's Section 8(a) Business Development program, SBA authorizes a program term of up to 9 years in 13 CFR 124.2. For VA's SDVOSB/VOSB verification program, VA has now determined that a program term of 2 years is reasonable given the mandatory nature of VA's SDVOSB/VOSB set-aside authority in contrast to the discretionary nature of the HUBZone and Section 8(a) set-aside programs. In accordance with 38 U.S.C. 8127 and VA Acquisition Regulation, 48 CFR Part 819, VA is required to set aside any open market procurement for SDVOSBs and then VOSBs, first and second respectively, if two or more such concerns are reasonably anticipated to submit offers at fair and reasonable pricing. Given the large volume of appropriated funds subject to these set-aside requirements, a 2-year eligibility period prior to re-examination is deemed reasonable to adequately balance the burden on SDVOSB/VOSBs and to protect the integrity of the program.

Administrative Procedure Act

The Secretary of Veterans Affairs finds good cause to issue this interim final rule prior to notice and comment procedures. The interim rule makes only a minor modification to extend the eligibility period for SDVOSB/VOSBs after VA's initial robust verification examination and approval from 1 year to 2 years. The rule will reduce the administrative burden on SDVOSB/VOSB participants by eliminating annual re-verification submissions. The integrity of the program remains protected by the initial robust and detailed verification examination, the regulatory requirement of participants to report changes to ownership and control during their eligibility period, VA's authority to conduct random site examinations and to re-examine eligibility upon receipt of any reasonably credible information affecting SDVOSB/VOSB verified status, and, for individual acquisitions, the status protest process, where VA contracting officers or competing vendors can challenge the SDVOSB/VOSB status of offerors if a reasonable basis can be asserted to be decided by VA OSDBU on SDVOSB/VOSB set-aside acquisitions. For these reasons, the Secretary of Veterans Affairs is issuing this as an interim final rule. In view of the detrimental effects of continuing an unnecessary administrative burden on program participants and verifying officials, and to avoid delays in verification caused by repetitive annual reviews, the Secretary finds it is impracticable, unnecessary, and contrary to public interest to delay the effective date of this regulation for the purpose of soliciting advance public comment. The Secretary of Veterans Affairs will consider and address comments that are received within 60 days of the date this interim final rule is published in the **Federal Register.**

For these same reasons, and because this interim final rule relieves a restriction, the Secretary finds that this rule will be effective on the date of publication.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, applies to this final rule. This interim final rule is generally neutral in its effect on small businesses because it relates only to small businesses applying for verified status in VA's SDVOSB/VOSB verified database. The overall impact of the rule will benefit small businesses owned by veterans or service-disabled veterans because it will reduce their administrative burden associated with maintaining verified status by extending the need for re-verification by VA from 1 year to 2 years. VA has estimated the cost to an individual business to be less than $100.00 for 70–75 percent of the businesses seeking verification, and the average cost to the entire population of veterans seeking to become verified is less than $325.00 on average. Increasing the verification period will decrease the frequency of any such costs. On this basis, the Secretary certifies that the adoption of this interim final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, under 5 U.S.C. 605(b), this regulation is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by

another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

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

VA has already established the SDVOSB/VOSB verification program in regulation at 38 CFR part 74, and the minor change in this interim final rule will solely modify the term of eligibility after initial verification from 1 year to 2 years in 38 CFR 74.15(a) before re-verification would be required.

Unfunded Mandates

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

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Catalog of Federal Domestic Assistance

This interim final rule affects the verification guidelines of veteran-owned small businesses, for which there is no Catalog of Federal Domestic Assistance program number.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on June 22, 2012, for publication.

List of Subjects in 38 CFR Part 74

Administrative practice and procedures, Privacy, Reporting and recordkeeping requirements, Small business, Veteran, Veteran-owned small business, Verification.

Dated: June 22, 2012.

Robert C. McFetridge,

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

For the reasons set out in the preamble, VA amends 38 CFR part 74 as follows:

PART 74—VETERANS SMALL BUSINESS REGULATIONS

■ 1. The authority citation for part 74 continues to read as follows:

Authority: 38 U.S.C. 501, 513, and as noted in specific sections.

§ 74.15 [Amended]

■ 2. In § 74.15, paragraph (a), the first sentence is amended by removing ''1 year'' and adding, in its place, ''2 years''.

[FR Doc. 2012–15801 Filed 6–26–12; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2011–0627; FRL–9692–8]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Missouri and Illinois; St. Louis Nonattainment Area; Determination of Attainment by Applicable Attainment Date for the 1997 Annual Fine Particulate Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is determining, pursuant to the Clean Air Act (CAA), that the bi-state St. Louis, Missouri-Illinois, fine particulate ($PM_{2.5}$) nonattainment area (hereafter referred to as ''the St. Louis area'' or ''the area'') has attained the 1997 annual $PM_{2.5}$ national ambient air quality standards (NAAQS) by its applicable attainment date of April 5, 2010. This determination is based on quality-assured and certified monitoring data for the 2007–2009 monitoring period. Based on this data, EPA previously determined on May 23, 2011, that the area attained the 1997 standards, and EPA suspended certain planning requirements for the area based on that determination. EPA is now finding that the St. Louis area attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date. EPA is finalizing this action because it is consistent with the CAA and its implementing regulations.

DATES: This rule is effective on July 27, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2011–0627. All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Atmospheric Section, Air Planning and Development Branch, Air Waste and Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: In Region 7, Steven Brown, Atmospheric Programs Section, Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. Steven Brown may be reached by telephone at (913) 551–7718 or via electronic mail at *brown.steven@epa.gov*. In Region 5, John Summerhays, Attainment Planning and Maintenance Section, Air Programs Branch (AR 18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. The telephone number is (312) 886–6067. Mr. Summerhays can also be reached via electronic mail at *summerhays.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking?
II. What is the effect of this action?
III. What is the final action?
IV. Statutory and Executive Order Reviews

I. What action is EPA taking?

Based on EPA's review of the quality-assured and certified monitoring data for 2007–2009, and in accordance with section 179(c)(1) of the CAA, EPA is determining that the St. Louis area attained the 1997 annual $PM_{2.5}$ NAAQS

by the applicable attainment date of April 5, 2010. The St. Louis area is comprised of Jefferson County, Franklin County, St. Louis County, St. Louis City, and St. Charles in Missouri, and Madison, Monroe and St. Clair Counties, and Baldwin Township in Randolph County in Illinois. On May 23, 2011, EPA published a final rulemaking making a determination that the St. Louis area attained the 1997 annual $PM_{2.5}$ NAAQS based on quality-assured, quality controlled and certified ambient air monitoring data for the 2007–2009 monitoring period and thereby suspended the requirements for the St. Louis area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the 1997 annual $PM_{2.5}$ NAAQS so long as the area continues to attain the 1997 Annual $PM_{2.5}$ NAAQS. See 76 FR 29652. Further information regarding that action is available in the notice proposing that action, published on March 7, 2011, at 76 FR 12302.

Today's final action merely makes a determination that the St. Louis area attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date. This action does not revisit the prior attainment determination or reconsider the suspension of the requirements for the St. Louis area to submit an attainment demonstration and associated RACM, an RFP plan, contingency measures, and other planning SIP revisions related to attainment of the standard. More information regarding the 1997 annual $PM_{2.5}$ NAAQS and the area's attainment of that NAAQS is available at 76 FR 29652 (May 23, 2011). A detailed discussion of EPA's review of the monitoring data showing attainment of the standard can be found in the March 7, 2011 proposed action and the May 23, 2011 final action.

Other specific requirements of the determination and the rationale for EPA's action today are explained in the Notice of Proposed Rulemaking (NPR) published on December 20, 2011 (76 FR 78869). The comment period closed on January 19, 2012. No comments were received in response to the NPR.

II. What is the effect of this action?

Today's action is a determination that the St. Louis area attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010, consistent with CAA section 179(c)(1). Finalizing this action does not constitute a redesignation of the St. Louis area to attainment of the 1997 annual $PM_{2.5}$ NAAQS under section 107(d)(3) of the CAA. Further, finalizing this action does not involve approving maintenance plans for the St. Louis area as required under section 175A of the CAA, nor would it find that the St. Louis area has met all other requirements for redesignation. The designation status of the St. Louis area remains nonattainment for the 1997 annual $PM_{2.5}$ NAAQS until such time as EPA determines that the area meets the CAA requirements for redesignation to attainment and takes action to redesignate the area.

III. What is the final action?

This action is a final determination, based on quality-assured and certified monitoring data for the 2007–2009 monitoring period, that the St. Louis area attained the annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010. This action is being taken pursuant to section 179(c)(1) of the CAA and is consistent with the CAA and its implementing regulations.

IV. Statutory and Executive Order Reviews

This final action merely makes a determination of the St. Louis area's attainment of the 1997 $PM_{2.5}$ NAAQS based upon complete, quality-assured, and certified ambient air quality data, pursuant to statutory mandate, and does not impose additional requirements beyond those imposed by state law. This final action makes a non-discretionary determination of the St. Louis area's attainment of the 1997 $PM_{2.5}$ NAAQS based solely upon complete, quality-assured, and certified ambient air quality data, as mandated by CAA section 179(c)(1). For that reason, this final 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 final rule determines that the St. Louis area attained the 1997 annual average $PM_{2.5}$ NAAQS by its applicable attainment date does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIPs are not approved to apply in Indian country located in the states, 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 16, 2012.

Karl Brooks,

Regional Administrator, Region 7.

Dated: June 15, 2012.

Susan Hedman,

Regional Administrator, Region 5.

Therefore, 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.*

■ 2. Section 52.725(k) is revised to read as follows:

§ 52.725 Control Strategy: Particulates.

* * * * *

(k) Determination of attainment. EPA has determined, as of May 23, 2011, that the St. Louis (MO-IL) metropolitan 1997

$PM_{2.5}$ nonattainment area has attained the 1997 $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 51.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, reasonable further progress, contingency measures, and other plan elements related to attainment of the standards for as long as the area continues to meet the 1997 $PM_{2.5}$ NAAQS. In addition, based upon review of the air quality data for the 3-year period 2007 to 2009, EPA has determined that the St. Louis (MO-IL) $PM_{2.5}$ nonattainment area has attained the 1997 $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010.

■ 3. Section 52.1341 is revised to read as follows:

§ 52.1341 Control strategy: Particulate.

Determination of attainment. EPA has determined, as of May 23, 2011, that the St. Louis (MO-IL) metropolitan 1997 $PM_{2.5}$ nonattainment area has attained the 1997 $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 51.1004(c), suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, reasonable further progress, contingency measures, and other plan elements related to attainment of the standards for as long as the area continues to meet the 1997 $PM_{2.5}$ NAAQS. In addition, based upon EPA's review of the air quality data for the 3-year period 2007 to 2009, the St. Louis (MO-IL) $PM_{2.5}$ nonattainment area has attained the 1997 $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010.

[FR Doc. 2012–15573 Filed 6–26–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0219; FRL–9691–5]

Approval and Promulgation of Implementation Plans; State of North Carolina; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval of a revision to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina through the North Carolina Department of Environment and Natural Resources (NC DENR), Division of Air Quality (DAQ), on December 17, 2007. North Carolina's December 17, 2007, SIP revision addresses regional haze for the first implementation period. Specifically, this SIP revision addresses the requirements of the Clean Air Act (CAA or Act) and EPA's rules that require states to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas (national parks and wilderness areas) caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA is finalizing a limited approval of North Carolina's December 17, 2007, SIP revision to implement the regional haze requirements for North Carolina on the basis that this SIP revision, as a whole, strengthens the North Carolina SIP. In a separate action published on June 7, 2012, EPA finalized a limited disapproval of this same SIP revision because of the deficiencies in the State's regional haze SIP revision arising from the remand by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) to EPA of the Clean Air Interstate Rule (CAIR).

DATES: *Effective Date:* This rule will be effective July 27, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2010–0219. All documents in the docket are listed on the *www.regulations.gov* web site. Although listed in the index, some information is not 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 the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Michele Notarianni can be reached at telephone number (404) 562–9031 and by electronic mail at *notarianni.michele@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What is the background for this final action?
II. What is EPA's response to comments received on this action?
III. What is the effect of this final action?
IV. Final Action
V. Statutory and Executive Order Reviews

I. What is the background for this final action?

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 (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (e.g., sulfur dioxide (SO_2), nitrogen oxides (NO_X), and in some cases, ammonia and volatile organic compounds). Fine particle precursors react in the atmosphere to form fine particulate matter ($PM_{2.5}$) 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.

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I areas which impairment results from manmade air pollution.'' On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, i.e., ''reasonably attributable visibility impairment.'' *See* 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 35713), the Regional Haze Rule (RHR). The RHR revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309. 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) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

On December 17, 2007, NC DENR submitted a revision to North Carolina's SIP to address regional haze in the State's and other states' Class I areas. On February 28, 2012, EPA published an action proposing a limited approval of North Carolina's December 17, 2007, SIP revision to address the first implementation period for regional haze.[1] *See* 77 FR 11858. EPA proposed a limited approval of North Carolina's December 17, 2007, SIP revision to implement the regional haze requirements for North Carolina on the basis that this revision, as a whole, strengthens the North Carolina SIP. See section II of this rulemaking for a summary of the comments received on the proposed actions and EPA's responses to these comments. Detailed background information and EPA's rationale for the proposed action is provided in EPA's February 28, 2012, proposed rulemaking.

Following the remand of CAIR, EPA issued a new rule in 2011 to address the interstate transport of NO_X and SO_2 in the eastern United States. *See* 76 FR 48208 (August 8, 2011) (''the Transport Rule,'' also known as the Cross-State Air Pollution Rule (CSAPR)). On December 30, 2011, EPA proposed to find that the trading programs in the Transport Rule would achieve greater reasonable progress towards the national goal of achieving natural visibility conditions than would best available retrofit technology (BART) in the states in which the Transport Rule applies (including North Carolina). *See* 76 FR 82219. Based on this proposed finding, EPA also proposed to revise the RHR to allow states to substitute participation in the trading programs under the Transport Rule for source-specific BART. EPA finalized this finding and RHR revision on June 7, 2012 (77 FR 33642).

Also on December 30, 2011, the DC Circuit stayed the Transport Rule (including the provisions that would have sunset CAIR and the CAIR FIPs) and instructed the EPA to continue to administer CAIR pending the outcome of the court's decision on the petitions for review challenging the Transport Rule. *EME Homer City* v. *EPA,* No. 11–1302.

II. What is EPA's response to comments received on this action?

EPA received two sets of comments on the February 28, 2012, rulemaking proposing a limited approval of North Carolina's December 17, 2007, regional haze SIP revision. Specifically, the comments were received from the Southern Environmental Law Center (on behalf of the National Parks Conservation Association and the Sierra Club) and the U.S. National Park Service. Full sets of the comments provided by all of the aforementioned entities (hereinafter referred to as ''the Commenter'') are provided in the docket for today's final action. A summary of the comments and EPA's responses are provided below.

Comment 1: The Commenter incorporates by reference comments that it submitted to EPA on February 28, 2012, regarding the Agency's December 30, 2011, proposed rulemaking to find that the Transport Rule is ''Better than BART'' and to use the Transport Rule as an alternative to BART for North Carolina and other states subject to the Transport Rule. *See* 76 FR 82219. The Commenter also restates several of these comments, including the following: the Transport Rule does not comply with EPA's criteria for an alternative to BART; the State cannot rely on the proposed ''Better than BART'' rulemaking given the DC Circuit's action staying implementation of the Transport Rule; EPA has not accounted for the differences in averaging time under BART, the Transport Rule, and in measuring visibility impacts; EPA's modeling assumed nitrate levels that are often lower than real-world conditions; in some instances, EPA relied on a single monitor to assess visibility conditions in multiple Class I areas; EPA uses a simple arithmetic mean to conclude that visibility improvements will be greater under the Transport Rule than BART; and EPA's proposed ''Better than BART'' determination relies on a 2014 base case that does not account for permanent emissions reductions at non-BART eligible sources.

Response 1: These comments are beyond the scope of this rulemaking. In today's action, EPA is finalizing a limited approval of North Carolina's regional haze SIP. EPA did not propose to find that participation in the Transport Rule is an alternative to BART in this action nor did EPA reopen discussions on the CAIR provisions as they relate to BART.[2] As noted above, EPA proposed to find that the Transport Rule is ''Better than BART'' and to use the Transport Rule as an alternative to BART for North Carolina in a separate action on December 30, 2011, and the Commenter is merely reiterating and incorporating its comments on that separate action. EPA addressed these comments concerning the Transport Rule as a BART alternative in a final action that was published on June 7, 2012, and has determined that they do not affect the Agency's ability to finalize a limited approval of North Carolina's regional haze SIP. EPA's responses to these comments can be found in Docket ID No. EPA–HQ–OAR–2011–0729 at *www.regulations.gov*.

Comment 2: The Commenter asserts that the proposed limited approval of North Carolina's regional haze SIP violates the CAA and RHR because a regional haze plan's BART requirements and long-term strategy to achieve reasonable progress cannot be evaluated in isolation from one another. The Commenter supports its position by repeating statements made in its February 28, 2012, comments on the Agency's proposed December 30, 2011, rulemaking to find that the Transport Rule is ''Better than BART'' and to use the Transport Rule as an alternative to BART for North Carolina and other states subject to the Transport Rule. For example, the Commenter states that ''[b]ecause BART is a critical component to achieving reasonable progress, neither the states nor EPA are authorized to exempt sources from the RHR's BART requirements without considering how doing so will affect the overarching reasonable progress

[1] In a separate action, published on June 7, 2012 (77 FR 33642), EPA finalized a limited disapproval of the North Carolina regional haze SIP because of deficiencies in the State's regional haze SIP submittal arising from the State's reliance on CAIR to meet certain regional haze requirements. This final limited disapproval triggers a 24-month clock by which a Federal Implementation Plan (FIP) or EPA-approved SIP must be in place to address the deficiencies.

[2] In a final action published on July 6, 2005, EPA addressed similar comments related to CAIR and determined that CAIR makes greater reasonable progress than BART for certain EGUs and pollutants (70 FR 39138). EPA did not reopen comment on that issue through this rulemaking.

mandate. * * * Concluding that CSAPR achieves greater reasonable progress toward achieving natural visibility conditions than BART, without regard to defined reasonable progress goals, is arbitrary and contrary to law under the Clean Air Act and the RHR.''

Response 2: As discussed in the response to Comment 1, today's action does not address reliance on CAIR or CSAPR to satisfy BART requirements. Comments related to the approvability of CAIR or CSAPR for the North Carolina regional haze SIP are therefore beyond the scope of this rulemaking and were addressed by EPA in a separate action published on June 7, 2012 (77 FR 33642). EPA addressed the Commenter's repeated statements regarding the interrelatedness of BART, the LTS, and RPGs in that final rulemaking action and those responses support this limited approval action.[3]

Comment 3: The Commenter asserts that EPA does not have the authority under the CAA to issue a limited approval of North Carolina's regional haze SIP. The Commenter contends that section 110(k) of the Act only allows EPA to fully approve, partially approve and partially disapprove, conditionally approve, or fully disapprove a SIP.

Response 3: As discussed in the September 7, 1992, EPA memorandum cited in the notice of proposed rulemaking,[4] although section 110(k) of the CAA may not expressly provide authority for limited approvals, the plain language of section 301(a) does provide ''gap-filling'' authority authorizing the Agency to ''prescribe such regulations as are necessary to carry out'' EPA's CAA functions. EPA may rely on section 301(a) in conjunction with the Agency's SIP approval authority in section 110(k)(3) to issue limited approvals where it has determined that a submittal strengthens a given state's implementation plan and that the provisions meeting the applicable requirements of the Act are not separable from the provisions that do not meet the Act's requirements. EPA has adopted the limited approval approach numerous times in SIP actions across the nation over the last twenty years. A limited approval action is appropriate here because EPA has determined that North Carolina's SIP revision addressing regional haze, as a whole, strengthen the State's implementation plan and because the provisions in the SIP revision are not separable.

The Commenter states that EPA's action ''conflicts with the plain language of the [CAA]'' and cites several federal appellate court decisions to support its contention that section 110(k) of the Act limits EPA to a full approval, ''a conditional approval, a partial approval and disapproval, or a full disapproval.'' However, adopting the Commenter's position would ignore section 301 and violate the '' 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme' * * *. A court must therefore interpret the statute 'as a symmetrical and coherent regulatory scheme,' * * * and 'fit, if possible, all parts into an harmonious whole.' '' *FDA* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 133 (2000) (quoting *Davis* v. *Michigan Dept. of Treasury,* 489 U.S. 803, 809 (1989), *Gustafson* v. *Alloyd Co.,* 513 U.S. 561, 569 (1995), and *FTC* v. *Mandel Brothers, Inc.,* 359 U.S. 385, 389 (1959)). Furthermore, the cases cited by the Commenter did not involve challenges to a limited approval approach, and one of the cases, *Abramowitz* v. *EPA,* 832 F.2d 1071 (9th Cir. 1988), predates the 1990 CAA amendments enacting section 110(k).

Comment 4: The Commenter contends that it was inappropriate for the State to ''rel[y] on CAIR (and now CSAPR)'' in determining RPGs and that due, in part, to this reliance, the State ''failed to evaluate numerous sources that contribute significantly to visibility impairment at the State's Class I areas'' and that it ''cast doubts on the validity of DAQ's modeling.'' The Commenter therefore believes that EPA should not approve the SIP unless the State considers additional reasonable progress from the 16 electric generating units (EGUs) excluded from the reasonable progress analyses and the State conducts further analyses in setting its RPGs (or EPA ''ensure[s] that DAQ follows through on its commitment to re-evaluate its ability to meet its RPGs in the five-year progress review, pursuant to 40 CFR 52.308(g)''). The Commenter also states that ''even when the uniform rate of progress [URP] is predicted to be met, the state still has an obligation 'to go beyond the URP analysis in establishing RPGs * * * to determine whether additional progress would be reasonable based on the statutory factors.' ''

Response 4: The State took into account emissions reductions expected from CAIR to determine the 2018 RPGs for its Class I areas, and this approach was fully consistent with EPA guidance at the time of SIP development. In the regional haze program, uncertainties associated with modeled emissions projections into the future are addressed through the requirement under the RHR to submit periodic progress reports in the form of a SIP revision. Specifically, 40 CFR 51.308(g) requires each state to submit a report every five years evaluating progress toward the RPGs for each mandatory Class I area located in the state and for each Class I area outside the state that may be affected by emissions from the state. Since this five-year progress re-evaluation is a mandatory requirement, it is unnecessary for EPA to take additional measures to ''ensure'' that the State meets its reporting obligation.

Regarding the need to go beyond the URP analysis when establishing RPGs, EPA affirmed in the RHR that the URP is not a ''presumptive target;'' rather, it is an analytical requirement for setting RPGs. *See* 64 FR 35731. In determining RPGs for the North Carolina Class I areas, the State identified sources through its area of influence methodology for reasonable progress control evaluation and described those evaluations in its SIP. For its EGUs subject to CAIR, DAQ reviewed the statutory factors (i.e., the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources) as evaluated by EPA for CAIR.

Comment 5: The Commenter states that in exempting EGUs from a BART analysis for particulate matter ''on the basis that their contribution to visibility impairment modeled less than 0.5 deciview, it does not appear that DAQ considered the cumulative impact of those sources that did not individually exceed the 0.5 dv threshold, but collectively may cause or contribute to impairment.'' The Commenter cites to EPA guidelines in 70 FR 39161 to support its belief that this exemption threshold ''applies when all visibility impairing pollutants are modeled together, not one pollutant at a time, as used by DAQ.'' According to the

[3] *See* EPA, Response to Comments Document, Regional Haze: Revisions to Provisions Governing Alternatives to Source-Specific Best Available Retrofit Technology (BART) Determinations, Limited SIP Disapprovals, and Federal Implementation Plans (76 FR 82219; December 30, 2011), Docket Number EPA–HQ–OAR–2011–0729 (May 30, 2012), pages 49–51 (noting that EPA ''disagree[s] with comments that we cannot evaluate the BART requirements in isolation from the reasonable progress requirements. We have on several occasions undertaken evaluations of a state's BART determination or promulgated a FIP separately from our evaluation of whether the SIP as a whole will ensure reasonable progress.'').

[4] *Processing of State Implementation Plan (SIP) Revisions,* EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I–X, September 7, 1992, (''1992 Calcagni Memorandum'') located at *http://www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf.*

Commenter, when considering the modeling impacts from coarse particulate matter (PM_{10}) alone for the exempted sources, their combined ''contribution to visibility impairment greatly exceeds the 0.5 dv contribution threshold,'' calling into question the ''validity of DAQ's exemptions of multiple sources from BART.''

Response 5: As discussed in the proposal, (*see* section IV.C.6.B.2, February 28, 2012, 77 FR 11873), North Carolina adequately justified its contribution threshold of 0.5 deciview. While states have the discretion to set an appropriate contribution threshold considering the number of emissions sources affecting the Class I area at issue and the magnitude of the individual sources' impacts, the states' analysis must be consistent with the CAA, the RHR, and EPA's *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR Part 51 (BART Guidelines). Consistent with the regulations and EPA's guidance, ''the contribution threshold should be used to determine whether an individual source is reasonably anticipated to contribute to visibility impairment. You should not aggregate the visibility effects of multiple sources and compare their collective effects against your contribution threshold because this would inappropriately create a 'contribution to contribution' test.'' *See also* 70 FR 39121. North Carolina's analysis in the regional haze SIP revision was consistent with EPA's regulations and guidance on the issue of cumulative analyses.

Regarding modeling in North Carolina's submittal that uses PM only for its BART-eligible EGUs, EPA previously determined that this approach is appropriate for EGUs where the State proposed to rely on CAIR to satisfy the BART requirements for SO_2 and NO_X.[5]

Comment 6: The Commenter believes that ''it is simply absurd for North Carolina to exempt'' Blue Ridge Paper Products from the obligation to install BART and that the State ''should work with the company to develop a facility-wide emissions reduction plan by 2013 and to implement the plan by 2018.''

Response 6: In accordance with the BART Guidelines, to determine the level of control that represents BART for each source, the State first reviewed existing controls on the five BART-eligible units at the Blue Ridge facility to assess whether these constituted the best controls currently available, then identified what other technically feasible controls are available, and finally, evaluated the technically feasible controls using the five BART statutory factors. The units subject to the BART requirements at Blue Ridge Paper include the two recovery furnaces, their associated smelt dissolving tanks, and the black liquor oxidation system. DAQ concluded that BART for all of these emissions sources is the existing emissions control systems currently in place. As discussed in the proposal (*see* section IV.C.6.C, February 28, 2012, 77 FR 11874), DAQ evaluated the available controls for BART and determined that these additional controls were either technically or economically infeasible. EPA has reviewed North Carolina's analyses and concluded that they were conducted in a manner that is consistent with EPA's BART Guidelines and EPA's *Air Pollution Control Cost Manual* (*http://www.epa.gov/ttncatc1/products.html#cccinfo).* Therefore, the conclusions reflect a reasonable application of EPA's guidance to these sources.

Comment 7: The Commenter contends that EPA must require North Carolina to include ''a retirement discussion that provides a realistic picture of future emissions from BART-subject sources'' in its SIP pursuant to 40 CFR 51.308(d)(3)(v) as there is ''no discussion of planned or potential EGU (or other source) retirements due to changes in energy markets, new regulations, and other factors.''

Response 7: Source retirement and replacement schedules are explicitly part of the emissions inventory that the State used to project future conditions. The projected inventories for 2009 and 2018 account for post-2002 emissions reductions from promulgated and proposed federal, state, local, and site-specific control programs. For EGUs, the Integrated Planning Model (IPM) was run to estimate emissions of the proposed and existing units in 2009 and 2018. These results were adjusted based on state and local air agencies' knowledge of planned emissions controls at specific EGUs. In the case of North Carolina, DAQ replaced all IPM 2009 results with emissions projections from Duke Power's and Progress Energy's North Carolina Clean Smokestacks Act Compliance Plan for 2006. For non-EGUs, Visibility Improvement State and Tribal Association of the Southeast (VISTAS) used recently updated growth and control data consistent with the data used in EPA's CAIR analyses and supplemented by state and local air agencies' data and updated forecasts from the U.S. Department of Energy. These updates are documented in the MACTEC emissions inventory report ''Documentation of the 2002 Base Year and 2009 and 2018 Projection Year Emission Inventories for VISTAS'' dated February 2007 (Appendix D of the North Carolina regional haze SIP submittal). The technical information provided in the record demonstrates that the emissions inventory in the SIP adequately reflects projection 2018 conditions and that the LTS meets the requirements of the RHR and is approvable. EPA finds that these inventories provide a reasonable assessment of future emissions from North Carolina sources.

Comment 8: According to the Commenter, it was ''inappropriate and arbitrary for DAQ to use the [State's Clean Smokestack's Act] cost per ton of SO_2 removed as the cost threshold for evaluating reasonable progress controls. The only rationale DAQ offered in support of this decision was that DAQ 'believes it is not equitable to require non-EGUs to bear a greater economic burden than EGUs for a given control strategy'. * * * EPA acknowledges that 'the use of a specific threshold for assessing costs means that a state may not fully consider available emissions reduction measures above its threshold that would result in meaningful visibility improvement,' but proposes to approve North Carolina's reasonable progress analysis anyway. EPA should re-evaluate this decision in its final action on this proposal, especially in light of the fact that DAQ determined that no additional reasonable controls were required at any of the sources affecting visibility in North Carolina's Class I areas.''

Response 8: As noted in EPA's Reasonable Progress Guidance,[6] the states have wide latitude to determine appropriate additional control requirements for ensuring reasonable progress, and there are many ways for a state to approach identification of additional reasonable measures. States must consider, at a minimum, the four statutory factors in determining reasonable progress, but states have flexibility in how to take these factors into consideration.

After reviewing DAQ's methodology and analyses and the record prepared by

[5] *Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations,* EPA Memorandum from Joseph Paisie, Group Leader, Geographic Strategies Group, OAQPS, to Kay Prince, Branch Chief, EPA Region 4, July 19, 2006, located at: *http://www.epa.gov/visibility/pdfs/memo_2006_07_19.pdf.*

[6] *Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program,,* July 1, 2007, memorandum from William L.Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (''EPA's Reasonable Progress Guidance''), page 4–2.

DAQ, EPA finds North Carolina's conclusion that no further controls are necessary at this time acceptable. As discussed in EPA's February 28, 2012, proposal, the State adequately evaluated the control technologies available at the time of its analysis and applicable to this type of facility and consistently applied its criteria for reasonable compliance costs. *See* 77 FR 11872. The State also included appropriate documentation in its SIP of the technical analysis it used to assess the need for and implementation of reasonable progress controls. Although the use of a specific threshold for assessing costs means that a state may not fully consider available emissions reduction measures above its threshold that would result in meaningful visibility improvement, EPA believes that the North Carolina SIP ensures reasonable progress.

In approving North Carolina's reasonable progress analysis, EPA is placing great weight on the fact that there is no indication in the SIP revision that North Carolina, as a result of using a specific cost effectiveness threshold, rejected potential reasonable progress measures that would have had a meaningful impact on visibility in its Class I areas.

Comment 9: The Commenter believes that EPA should require the State to verify that units 3 and 4 at PCS Phosphate have been shut down.

Response 9: The construction permit for the new unit 7 required the shutdown of these two units as a condition of commencing operation. The new unit is operating, and units 3 and 4 have been shut down.

Comment 10: The Commenter states that ''[a]ssurances of the State's 'intent' to 'have discussions' and to 'encourage' pollution reduction measures'' at Blue Ridge Paper, provided in response to the Federal Land Managers' (FLMs') request that the State describe a plan to consult with Blue Ridge Paper on potential control actions prior to 2018 that may warrant a higher cost of control for reasonable progress, ''does not satisfy the requirement to demonstrate reasonable progress toward the State's visibility goals.''

Response 10: North Carolina did not rely on additional controls at this facility to demonstrate that the State would meet its RPGs for this first implementation period, and DAQ stated in its SIP revision that additional controls are not required at the facility during the first implementation period. The State did not rely on the ''discussions'' and ''encouragement'' to contribute any emissions reductions to meeting the RPG goals for this first implementation period. It also made clear that conclusions reached regarding appropriate levels of control to meet reasonable progress for this first implementation period did not extend to the next implementation period. In subsequent implementation periods, North Carolina will once again determine the pollutants and sources with the greatest impact on visibility and implement appropriate emissions reduction measures as part of North Carolina's LTS for future implementation periods.

Comment 11: The Commenter claims that there is no information in the docket supporting the cost estimates for Blue Ridge Paper Products used by the State to determine that ''there are no cost-effective controls available for these units at this time within the cost threshold established for this reasonable progress assessment. . . . Without supporting data in the docket, neither we nor EPA can determine that the proper costing methodology was followed.''

Response 11: Blue Ridge Paper Products submitted supporting materials to the State for the BART determination that adequately document the cost methodology for the control equipment (included in Appendix L.10 of North Carolina's regional haze SIP submittal). North Carolina also summarized its evaluation methodology for lower sulfur coal options for two additional units evaluated for reasonable progress (Appendix H of the North Carolina's regional haze SIP submittal). Since this analysis involved the use of alternative coals, it is based on the cost premium for these coals and no costs for additional control equipment are projected. EPA has reviewed the supporting materials provided by DAQ and finds no reason to question the estimates or the conclusions reached by the State.

Comment 12: The Commenter recommends that EPA defer action on the Reasonable Progress analysis for Blue Ridge Paper Products until the State conducts a ''valid four-factor analysis'' and provides that analysis for public review. Specifically, the Commenter ''could find no information in the docket to support any of the 'cost of compliance' estimates presented by EPA'' and without such documentation, the Commenter is ''unable to provide informed comments on their validity or on the conclusions upon which they were based.''

Response 12: See the response to Comment 11. In addition, EPA notes that the Commenter was provided a draft of the North Carolina's regional haze SIP for review prior to the State's release of the SIP revision for public comment, and that the SIP revision went through public notice and comment rulemaking before the State submitted it to EPA. The Commenter raised no concerns with the adequacy of the documentation prior to EPA's proposed limited approval action.

III. What is the effect of this final action?

Under CAA sections 301(a) and 110(k)(6), and EPA's long-standing guidance, a limited approval results in approval of the entire SIP revision, even of those parts that are deficient and prevent EPA from granting a full approval of the SIP revision.[7] Today, EPA is finalizing a limited approval of North Carolina's December 17, 2007, regional haze SIP revision. This limited approval results in approval of North Carolina's entire regional haze submission and all its elements. EPA is taking this approach because North Carolina's SIP will be stronger and more protective of the environment with the implementation of those measures by the State and having federal approval and enforceability than it would without those measures being included in its SIP.

IV. Final Action

EPA is finalizing a limited approval of a revision to the North Carolina SIP submitted by the State of North Carolina on December 17, 2007, as meeting some of the applicable regional haze requirements as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–308.

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* OMB must approve all ''collections of information'' by EPA. The Act defines ''collection of information'' as a requirement for answers to ''* * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *''. 44 U.S.C. 3502(3)(A). The Paperwork Reduction Act does not apply to this action.

[7] 1992 Calcagni Memorandum.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the federal-state relationship under the CAA, preparation of flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act (UMRA)

Under sections 202 of the UMRA of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's action does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has Federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12 of the NTTAA of 1995 requires federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must

submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the 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).

K. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 27, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: June 13, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart II—North Carolina

■ 2. Section 52.1770(c) is amended:

■ a. By adding a new entry to Table 1 in paragraph (c) for ''Sect .0543'' in numerical order, and

■ b. By adding a new entry to the table in paragraph (e) for ''Regional Haze Plan'' at the end of the table.

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

TABLE 1—EPA-APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Subchapter 2D Air Pollution Control Requirements				
*	*	*	*	*
Section .0500 Emission Control Standards				
*	*	*	*	*
Sect .0543	Best Available Retrofit Technology	9/6/2006	6/27/2012 [Insert citation of publication].	
*	*	*	*	*

(e) * * *

EPA-APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	**Federal Register** citation
*	*	*	*
Regional Haze Plan	11/17/2007	6/27/2012	[Insert citation of publication].

[FR Doc. 2012–15468 Filed 6–26–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2009–0784; FRL–9691–9]

Approval and Promulgation of Implementation Plans; State of Mississippi; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval of revisions to the Mississippi State Implementation Plan (SIP) submitted by the State of Mississippi through the Mississippi Department of Environmental Management (MDEQ) on September 22, 2008, and May 9, 2011. Mississippi's SIP revisions address regional haze for the first implementation period. Specifically, these SIP revisions address the requirements of the Clean Air Act (CAA

or Act) and EPA's rules that require states to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas (national parks and wilderness areas) caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA is finalizing a limited approval of Mississippi's SIP revisions to implement the regional haze requirements for Mississippi on the basis that these SIP revisions, as a whole, strengthen the Mississippi SIP. In a separate action published on June 7, 2012, EPA finalized a limited disapproval of this same SIP revision because of the deficiencies in the State's regional haze SIP revision arising from the remand by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) to EPA of the Clean Air Interstate Rule (CAIR).

DATES: *Effective Date:* This rule will be effective July 27, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2009–0784. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not 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 the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Michele Notarianni can be reached at telephone number (404) 562–9031 and by electronic mail at *notarianni.michele@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What is the background for this final action?

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 (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (e.g., sulfur dioxide (SO_2), nitrogen oxides (NO_X), and in some cases, ammonia and volatile organic compounds. Fine particle precursors react in the atmosphere to form fine particulate matter ($PM_{2.5}$) 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.

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I areas which impairment results from manmade air pollution.'' On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, i.e., ''reasonably attributable visibility impairment.'' *See* 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 35713), the Regional Haze Rule (RHR). The RHR revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309. 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) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

On September 22, 2008, and May 9, 2011, MDEQ submitted revisions to Mississippi's SIP to address regional haze in the State's and other states' Class I areas. On February 28, 2012, EPA published an action proposing a limited approval of Mississippi's SIP revisions to address the first implementation period for regional haze.[1] *See* 77 FR 11879. EPA proposed a limited approval of Mississippi's SIP revisions to implement the regional haze requirements for Mississippi on the basis that this revision, as a whole, strengthens the Mississippi SIP. See section II of this rulemaking for a summary of the comments received on the proposed actions and EPA's responses to these comments. Detailed background information and EPA's rationale for the proposed action is provided in EPA's February 28, 2012, proposed rulemaking. *See* 77 FR 11879.

Following the remand of CAIR, EPA issued a new rule in 2011 to address the interstate transport of NO_X and SO_2 in the eastern United States. *See* 76 FR 48208 (August 8, 2011) (''the Transport Rule,'' also known as the Cross-State Air Pollution Rule (CSAPR)). On December 30, 2011, EPA proposed to find that the trading programs in the Transport Rule would achieve greater reasonable progress towards the national goal of achieving natural visibility conditions than would Best Available Retrofit Technology (BART) in the states in which the Transport Rule applies. *See* 76 FR 82219. Based on this proposed finding, EPA also proposed to revise the RHR to allow states to substitute participation in the trading programs under the Transport Rule for source-

[1] In a separate action, published June 7, 2012 (77 FR 33642), EPA finalized a limited disapproval of the Mississippi regional haze SIP because of deficiencies in the State's regional haze SIP submittal arising from the State's reliance on CAIR to meet certain regional haze requirements. This final limited disapproval triggers a 24-month clock by which a Federal Implementation Plan (FIP) or EPA-approved SIP must be in place to address the deficiencies.

specific BART. EPA finalized this finding and RHR revision on June 7, 2012 (77 FR 33642).

Also on December 30, 2011, the D.C. Circuit stayed the Transport Rule (including the provisions that would have sunset CAIR and the CAIR FIPs) and instructed the EPA to continue to administer CAIR pending the outcome of the court's decision on the petitions for review challenging the Transport Rule. *EME Homer City* v. *EPA,* No. 11–1302.

II. What is EPA's response to comments received on this action?

EPA received three sets of comments on the February 28, 2012, rulemaking proposing a limited approval of Mississippi's regional haze SIP revisions. Specifically, the comments were received from the National Park Service, Sierra Club, and the Chevron Products Company. Full sets of the comments provided by all of the aforementioned entities (hereinafter referred to as ''the Commenter'') are provided in the docket for today's final action. A summary of the comments and EPA's responses are provided below.

Comment 1: The Commenter believes that Mississippi's regional haze SIP is inadequate because it does not properly identify sources that should be subject to a reasonable progress analysis and disagrees with MDEQ's decision to not subject Mississippi Power Company—Plant Watson (Plant Watson) and the DuPont Delisle facility to a reasonable progress control evaluation on the basis that Louisiana did not identify these plants as potentially impacting the Breton Wilderness Area (Breton). The Commenter recognizes that it should be the responsibility of the state in which a federal Class I area is located to determine which sources should be evaluated for reasonable progress but also states its belief that, when a state fails to adequately address the federal Class I areas within its borders, the responsibility for protecting visibility at that federal Class I area shifts to those states who have identified sources within their boundaries that impact that federal Class I area. Therefore, the Commenter contends that MDEQ should consider applying some level of control to the two aforementioned facilities even though the Louisiana regional haze SIP submittal did not specifically identify them in its control strategy for Breton. The Commenter also states that there is no evidence that Mississippi consulted or corresponded with Louisiana regarding the potential visibility impacts from these two facilities.

Response 1: EPA disagrees with the Commenter's conclusion that the responsibility for developing an adequate long-term strategy (LTS) shifts from states with federal Class I areas within their boundaries to neighboring states. EPA's regulations are clear that ''[w]here the State has emissions that are reasonably anticipated to contribute to visibility impairment in any mandatory Class I Federal area located in another State or States, the State must consult with the other State(s) in order to develop coordinated emission management strategies.'' 40 CFR 52.308(d)(3)(i).

MDEQ has met its obligation to consult with Louisiana. In December 2006 and in May 2007, the State Air Directors from the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) states held formal interstate consultation meetings to discuss the methodology proposed by VISTAS for identifying sources to evaluate for reasonable progress. The states invited Federal Land Managers (FLMs) and EPA representatives to participate and to provide additional feedback, and the State Air Directors discussed the results of analyses showing contributions to visibility impairment from states to each of the federal Class I areas in the VISTAS region. Mississippi received letters from Louisiana and Alabama transmitting prehearing drafts of their regional haze SIPs and provided documentation of this correspondence and summaries of formal consultation meetings in Appendix J of the September 2008 Mississippi SIP submittal. MDEQ concurred on the reasonable progress goals (RPGs) for Breton and the Sipsey Wilderness Area and committed to continue collaboration with these states in the preparation of future VISTAS studies and analyses and in addressing regional haze issues in future implementation periods.

In addition, 40 CFR 51.308(d)(3)(ii) requires each state that causes or contributes to impairment in a mandatory federal Class I area to demonstrate that it has included in its implementation plan all measures necessary to obtain its share of the emissions reductions needed to meet the progress goals for the area. MDEQ has met its obligations with regard to obtaining emissions reductions since no additional control measures specific to Mississippi were identified by the Louisiana reasonable progress analysis. As noted in the proposal, after the time of Mississippi's original 2008 SIP submittal, Louisiana completed and submitted a regional haze SIP to address visibility at Breton. Neither Plant Watson nor the DuPont DeLisle facility were identified by Louisiana, either through consultations with Mississippi or in the Louisiana regional haze SIP, as sources potentially impacting Breton for which a reasonable progress control evaluation would be needed. Thus, EPA believes it is appropriate for Mississippi to determine that no further control analysis was necessary at these facilities at this time. Since Breton is in Louisiana, EPA believes that Mississippi appropriately relied on Louisiana's determination of which sources to prioritize for reasonable progress control evaluation during this implementation period. Mississippi has committed to continue to consult with Louisiana to assess the potential impact of facilities in Mississippi to help meet the visibility goals for Breton for future implementation periods.

Comment 2: The Commenter states that MDEQ improperly estimated emissions reductions for 2018 and that Mississippi's projection of future visibility conditions for 2018 is based on ''uncertain federal and state pollution control projects, including, in large part, on the emissions reductions anticipated from CAIR.'' The Commenter also believes that anticipated emissions reductions resulting from the other control programs considered by Mississippi (e.g., Industrial Boiler Maximum Achievable Control Technology, the Atlanta/Birmingham/Northern Kentucky 1997 8-hour ozone nonattainment area SIP) are just as uncertain as those resulting under CAIR and the Transport Rule, and that Mississippi ''need[s] to base its LTS on concrete, definite emissions reductions.'' The Commenter requests that, at a minimum, EPA should ensure that MDEQ follows through on its commitment to re-evaluate its ability to meet its RPGs in the five-year progress review.

Response 2: The technical information provided in the record demonstrates that the emissions inventory in the SIP adequately reflects projected 2018 conditions and that the LTS meets the requirements of the RHR and is approvable. Mississippi's 2018 projections are based on the State's technical analysis of the anticipated emissions rates and level of activity for electric generating units (EGUs), other point sources, nonpoint sources, on-road sources, and off-road sources based on their emissions in the 2002 base year, considering growth and additional emissions controls to be in place and federally enforceable by 2018. The emissions inventory used in the regional

haze technical analyses that was developed by VISTAS with assistance from Mississippi projected 2002 emissions (the latest region-wide inventory available at the time the submittal was being developed) and applied reductions expected from federal and state regulations affecting the emissions of volatile organic compounds and the visibility impairing pollutants NO_X, PM, and SO_2.

To minimize the differences between the 2018 projected emissions used in the Mississippi regional haze submittal and what actually occurs in 2018, the RHR requires that the five-year review address any expected significant differences due to changed circumstances from the initial 2018 projected emissions, provide updated expectations regarding emissions for the implementation period, and evaluate the impact of these differences on RPGs. It is expected that individual projections within a statewide inventory will vary from actual emissions over a 16-year period. For example, some facilities may shut down whereas others may expand operations. Furthermore, economic projections and population changes used to estimate growth often differ from actual events; new rules are modified, changing their expected effectiveness; and methodologies to estimate emissions improve, modifying emissions estimates. The five-year review is a mechanism to assure that these expected differences from projected emissions are considered and their impact on the 2018 RPGs is evaluated. In the regional haze program, uncertainties associated with modeled emissions projections into the future are addressed through the requirement under the RHR to submit periodic progress reports in the form of a SIP revision. Specifically, 40 CFR 51.308(g) requires each state to submit a report every five years evaluating progress toward the RPGs for each mandatory federal Class I area located in the state and for each federal Class I area outside the state that may be affected by emissions from the state. Since this five-year progress re-evaluation is a mandatory requirement, it is unnecessary for EPA to take additional measures to ''ensure'' that the State meets its reporting obligation. In the specific instances of uncertainty of future reductions cited by the Commenter, the State's analysis of projected emissions and its reliance on these projections to address its share of the emissions reductions needed to meet the RPGs for Breton in accordance with 40 CFR 51.308(d)(3)(ii) satisfy EPA guidance and the requirements of the regional haze regulations.

Comment 3: The Commenter does not believe that MDEQ can rely on CAIR or the Transport Rule to exempt the seven power plants with BART-eligible EGUs from an SO_2 and NO_X BART analysis. The Commenter enclosed letters that it submitted to EPA on February 28, 2012, with its comments on the Agency's proposed December 30, 2011, rulemaking to find that the Transport Rule is ''Better than BART'' and to use the Transport Rule as an alternative to BART for Mississippi and other states subject to the Transport Rule. *See* 76 FR 82219. The Commenter incorporates the comments in these letters by reference and repeats a subset of those comments, including the following: The Transport Rule cannot serve as the BART-alternative for the regional haze SIP process in Mississippi; EPA has not demonstrated that the Transport Rule assures greater reasonable progress than source-specific BART; EPA failed to account for the geographical and temporal uncertainties in emissions reductions inherent in a cap-and-trade program such as the Transport Rule; EPA underestimated the visibility improvements from BART using ''presumptive BART rather than actual BART;'' EPA did not consider subsequent revisions to the Transport Rule budget that increase emission allocations for EGUs in Mississippi; and EPA has not accounted for the differences in averaging time under BART, the Transport Rule, and in measuring visibility impacts.

Response 3: These comments are beyond the scope of this rulemaking. In today's action, EPA is finalizing a limited approval of Mississippi's regional haze SIP. EPA did not propose to find that participation in the Transport Rule is an alternative to BART in this action nor did EPA reopen discussions on the CAIR provisions as they relate to BART.[2] As noted above, EPA proposed to find that the Transport Rule is ''Better than BART'' and to use the Transport Rule as an alternative to BART for certain states in a separate action on December 30, 2011, and the Commenter is merely reiterating and incorporating comments submitted on that separate action. EPA addressed the Commenter's February 28, 2012, comments concerning the Transport Rule as a BART alternative in a final action that was published on June 7, 2012, and has determined that they do not affect the Agency's ability to finalize a limited approval of Mississippi's regional haze SIP. EPA's response to these comments can be found in Docket ID No. EPA–HQ–OAR–2011–0729 at *www.regulations.gov.*

Comment 4: The Commenter asserts that because ''the BART component of Mississippi's RH SIP is an essential element to the state's LTS for achieving its RPGs, Mississippi's treatment of CAIR (and now EPA's proposed substitution of CSAPR for CAIR) as an acceptable BART-alternative must be addressed in this present comment process. Separating the BART analysis from the remaining portion of the RH SIP would result in an inadequate SIP.'' The Commenter supports its position by repeating statements made in its February 28, 2012, comments on the Agency's proposed December 30, 2011, rulemaking to find that the Transport Rule is ''Better than BART'' and to use the Transport Rule as an alternative to BART for Mississippi and other states subject to the Transport Rule. For example, the Commenter states that ''EPA cannot exempt sources from the RHR's BART requirements without full consideration of how that exemption would affect the overarching reasonable progress mandate.''

Response 4: As discussed in the response to Comment 3, today's action does not address reliance on CAIR or CSAPR to satisfy BART requirements. Comments related to the approvability of CAIR or CSAPR for the Mississippi regional haze SIP are therefore beyond the scope of this rulemaking and were addressed by EPA in a separate action published on June 7, 2012 (77 FR 33642). EPA addressed the Commenter's repeated statements regarding the interrelatedness of BART, the LTS, and RPGs in that final rulemaking action and those responses support this limited approval action.[3]

EPA believes the Commenter overstates the overarching nature of the changes due to CAIR or CSAPR. The reliance on CAIR in the Mississippi submittal was consistent with EPA policy at the time the submittal was

[2] In a final action published on July 6, 2005, EPA addressed similar comments related to CAIR and determined that CAIR makes greater reasonable progress than BART for certain EGUs and pollutants (70 FR 39138). EPA did not reopen comment on that issue through this rulemaking.

[3] *See* EPA, Response to Comments Document, Regional Haze: Revisions to Provisions Governing Alternatives to Source-Specific Best Available Retrofit Technology (BART) Determinations, Limited SIP Disapprovals, and Federal Implementation Plans (76 FR 82219; December 30, 2011), Docket Number EPA–HQ–OAR–2011–0729 (May 30, 2012), pages 49–51 (noting that EPA ''disagree[s] with comments that we cannot evaluate the BART requirements in isolation from the reasonable progress requirements. We have on several occasions undertaken evaluations of a state's BART determination or promulgated a FIP separately from our evaluation of whether the SIP as a whole will ensure reasonable progress.'').

prepared. CSAPR is a replacement for CAIR, addressing the same regional EGU emissions, with many similar regulatory attributes. The need to address changes to the LTS resulting from the replacement of CAIR with CSAPR was acknowledged in the proposal, and as stated in the proposal, EPA believes that the five-year progress report is the appropriate time to address any changes to the RPG demonstration and, if necessary, the LTS. EPA expects that this demonstration will address the impacts on the RPG due to the replacement of CAIR with CSAPR as well as other adjustments to the projected 2018 emissions due to updated information on the emissions for other sources and source categories. If this assessment determines an adjustment to the regional haze plan is necessary, EPA regulations require a SIP revision within a year of the five-year progress report.

Comment 5: The Commenter believes that EPA's December 30, 2011, proposed substitution of CSAPR for source-specific BART is uniquely problematic in Mississippi since CSAPR only covers ozone season NO_X emissions in the State. According to the Commenter, EPA should require year-round NO_X controls since any controls that might be installed to meet CSAPR will not protect Breton, the Sipsey Wilderness Area, or other nearby federal Class I areas during the seven months outside of the ozone season. The Commenter reiterates that Mississippi must address BART for SO_2 and PM since the State is no longer included in a trading program for SO_2. One of the Commenters also expressed concern with EPA's statement that the disapproval of the BART provisions for SO_2 will trigger a 24-month clock for EPA to either implement a FIP to address those requirements or approve a revised SIP from the State that addresses SO_2 BART. The Commenter believes that this approach allows the State to further delay conducting SO_2 BART analyses for its BART-eligible EGUs and that these analyses must be conducted immediately.

Response 5: As discussed in the response to Comment 3, today's rule takes final action on the limited approval of Mississippi's regional haze SIP revisions. EPA did not propose to find that participation in the Transport Rule is an alternative to BART in this rulemaking. As noted above, EPA made this proposed finding in a separate action on December 30, 2011. These comments are therefore beyond the scope of this rulemaking and were addressed, as appropriate, by EPA in its final action (published on June 7, 2012) on the December 30, 2011, proposed rule. EPA has determined that the comments do not affect the Agency's ability to finalize a limited approval of Mississippi's regional haze SIP. Regarding the timing of a FIP, the EPA statement identified by the Commenter is a summary of the statutory requirements in section 110(c) of the CAA.

Comment 6: According to the Commenter, Mississippi should have considered the cumulative impacts of the PM emissions from the Moselle and D Morrow facilities when performing BART determinations and should not have modeled these sources in isolation of one another or without regard to PM emissions from sources in other states impacting any federal Class I area. The Commenter also believes that MDEQ should have considered both filterable and condensable PM when conducting its modeling.

Response 6: As discussed in the proposal, (see section IV.C.6.B.2, February 28, 2012, 77 FR 11889), Mississippi adequately justified its contribution threshold of 0.5 deciview. While states have the discretion to set an appropriate contribution threshold considering the number of emissions sources affecting the federal Class I area at issue and the magnitude of the individual sources' impacts, the states' analysis must be consistent with the CAA, the Regional Haze regulations and EPA's *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR Part 51 (BART Guidelines). Consistent with the regulations and EPA's guidance, ''the contribution threshold should be used to determine whether an individual source is reasonably anticipated to contribute to visibility impairment. You should not aggregate the visibility effects of multiple sources and compare their collective effects against your contribution threshold because this would inappropriately create a 'contribution to contribution' test.'' *See also* 70 FR 39121. Mississippi's analyses in its regional haze SIP revisions were consistent with EPA's regulations and guidance on the issue of cumulative analyses.

It is unclear what condensable PM emissions the Commenter believes that the State should have included in its visibility modeling. Each of the units evaluated for BART in Mississippi's regional haze SIP submittal followed the VISTAS modeling protocol and considered the contribution of total PM_{10} and $PM_{2.5}$ (as a subset of the total PM_{10}) as well as condensable PM (primarily sulfuric acid mist) (see Appendix L of Mississippi's regional haze SIP submittal). Regarding modeling in Mississippi's submittal that uses PM only for its BART-eligible EGUs, EPA previously determined that this approach is appropriate for EGUs where the State proposed to rely on CAIR to satisfy the BART requirements for SO_2 and NO_X.[4]

Comment 7: The Commenter states that Mississippi's BART analyses for Chevron Products' Pascagoula refinery (Chevron) and Mississippi Phosphates Corporation (MPC) are insufficient, and therefore, EPA cannot approve the State's regional haze SIP. Regarding Chevron, the Commenter disagrees with MDEQ's determination that significant visibility improvement could not be gained at reasonable cost over the improvements already attained through the facility's air permits and a June 7, 2005, consent decree. The Commenter contends that a more robust cost analysis is necessary to assure that the costs outweigh the visibility benefits from the evaluated pollution controls and that Mississippi should have considered additional pollution control technologies in its analysis such as selective catalytic reduction and selective non-catalytic reduction for NO_X. Regarding MPC, the Commenter believes that the best available control technology (BACT) emissions limits for SO_2 (determined to be BART) are not sufficiently stringent because it believes that emissions limits determined to be BACT for sulfuric acid plants at other facilities have been set at lower levels. The Commenter does not believe that Mississippi provided an adequate explanation as to why it did not set its BACT level as low as those set for similar facilities. The Commenter is also concerned that Mississippi's regional haze SIP does not discuss enforceable limits for NO_X, particulates, or sulfuric acid mist at the facility and states that MDEQ should have analyzed emissions limits at other facilities when evaluating BART.

Response 7: As stated in Appendix Y of 40 CFR part 51, available retrofit control options are those air pollution control technologies with a practical potential for application to the emissions unit and the regulated pollutant under evaluation. In identifying ''all'' options, a state must identify the most stringent option and a reasonable set of options for analysis that reflects a comprehensive list of available technologies. It is not

[4] *Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations,* EPA Memorandum from Joseph Paisie, Group Leader, Geographic Strategies Group, OAQPS, to Kay Prince, Branch Chief, EPA Region 4, July 19, 2006, located at *http://www.epa.gov/visibility/pdfs/memo_2006_07_19.pdf.*

necessary to list all permutations of available control levels that exist for a given technology; the list is complete if it includes the maximum level of control that each technology is capable of achieving.[5]

For Chevron, MDEQ concluded that all the planned controls in the aforementioned consent decree for the Chevron facility were BART. The State then evaluated additional control options for BART for the most significant units that remain uncontrolled after the planned emissions controls were installed. The costs and visibility impacts were assessed in accordance with EPA guidance. Emissions reductions from the evaluated control options are projected to provide limited visibility improvements ranging from 0.043 deciview to 0.16 deciview, which are beyond those expected from the already planned emissions reductions. For each option, the total cost effectiveness and incremental cost effectiveness exceed $29 million per deciview; therefore, Mississippi determined that these options are not BART. A detailed analysis is provided in Appendix L10 of Mississippi's regional haze SIP submittal.

Regarding MPC, BACT and BART are both case-specific determinations. MDEQ determined BACT to be the replacement of vanadium catalyst with cesium catalyst in the third and fourth converter passes, yielding emissions of 3.0 pounds of SO_2 per ton of sulfuric acid produced. MDEQ believes that this BACT determination is sufficient because sulfuric acid plants with more stringent limits had a 3/1 converter design as compared to MPC's current 2/2 converter design. Even though the technology being applied is identical to that applied to other facilities, the 3/1 design achieves a higher conversion rate resulting in approximately a 50 percent reduction of SO_2 in the exhaust compared to the exhaust from a 2/2 converter design. MPC identified mist eliminators as the most effective sulfuric acid mist control technology, and MDEQ determined BART to be vertical tube mist eliminators in the interpass absorption tower. The final absorption tower already has these mist eliminators installed. MPC also proposed to replace the economizer prior to the final absorption tower with a larger one which will have the effect of lowering the exhaust gas temperature and thus reducing sulfuric acid mist emissions. Since the vertical tube mist eliminators are the most efficient add-on control technology, no additional control technologies were considered. MPC has determined a sulfuric acid mist limit of 0.10 pound sulfuric acid mist per ton of sulfuric acid produced, and MDEQ considers this limit consistent with recent BACT determinations since it is among the most stringent achieved in practice. Concerning NO_X and particulates, sulfuric acid plants are not a primary source of NO_X or PM emissions. See Mississippi's May 9, 2011, regional haze SIP submittal for a detailed discussion of the determination and the permit to construct.

EPA has reviewed MDEQ's analyses and concluded they were conducted in a manner that is consistent with EPA's BART Guidelines and reflect a reasonable application of EPA's guidance to these sources.

Comment 8: The Commenter contends that Mississippi's regional haze SIP must be revised to address Reasonably Attributable Visibility Impairment (RAVI) within three years of a FLM certifying visibility impairment and that the State's commitment to address RAVI, should a FLM certify visibility impairment, is not enough.

Response 8: The State's regional haze SIP revisions do not address RAVI requirements since RAVI is addressed by a different regulation than the RHR. EPA's visibility regulations direct states to coordinate their RAVI LTS provisions with those for regional haze and require the RAVI portion of a SIP to address any integral vistas identified by the FLMs. However, as stated in the March 28, 2012, proposed rulemaking, there are no federal Class I areas in Mississippi. There are no integral vistas in Mississippi or nearby federal Class I areas, no federal Class I areas near Mississippi are experiencing RAVI, nor are any Mississippi sources affected by the RAVI provisions. Thus, the Mississippi regional haze SIP revisions did not explicitly address the coordination of the regional haze with the RAVI LTS, although Mississippi did commit to ongoing consultation with the FLMs throughout the implementation process. EPA finds that Mississippi's regional haze SIP appropriately addresses the RAVI visibility provisions in its LTS. The commitments in Mississippi's SIP are consistent with the regulatory requirements for this provision.

Comment 9a: The Commenter claims that EPA must disapprove Mississippi's regional haze SIP because the SIP does not explain how monitoring data and other information will be used to determine the contribution of emissions from within the State to regional haze visibility impairment at Class I areas (see combined response below for comments 9a and 9b).

Comment 9b: The Commenter states that the SIP must clearly identify the method by which the State intends to report visibility monitoring to the EPA. If Mississippi plans to rely on the referenced Visibility Information Exchange Web System (VIEWS) Web site for reporting, the Commenter believes that the SIP must clearly state that Mississippi intends to use the Web site as its way of reporting visibility monitoring data and that ''it is not sufficient for Mississippi to 'encourage' VISTAS to maintain the web site.'' The Commenter also believes that Mississippi's SIP needs to have an enforceable mechanism to transmit the Interagency Monitoring of Protected Visual Environments (IMPROVE) data to EPA as well as an enforceable mechanism to ensure that the IMPROVE data is continually gathered by Mississippi ''unless it is gathered by other entities such as VISTAS and the National Park Service'' or EPA ''must disapprove the SIP submittal in this regard.''

Responses 9a, b: As noted by the Commenter, the primary monitoring network for federal Class I areas potentially affected by sources in Mississippi is the IMPROVE network. The responsibility for assuring that there is adequate monitoring and reporting of this data is with the state where the federal Class I area is located, and there are no IMPROVE sites in Mississippi since it has no federal Class I areas. In the SIP submittal, Mississippi states its intention to continue to consult with the FLMs annually on monitoring data from the IMPROVE network for federal Class I areas in adjacent states that might be affected by Mississippi sources. Monitoring data is different from emissions data or analyses conducted to attribute contribution, and these analyses are therefore part of the ten-year implementation period updates conducted by the states.

In its SIP revisions, Mississippi states its intention to rely on the IMPROVE network for complying with the regional haze monitoring requirement in EPA's RHR for the current and future regional haze implementation periods. Data produced by the IMPROVE monitoring network will be used nearly continuously for preparing the five-year progress reports and the 10-year SIP revisions, each of which relies on analysis of the preceding five years of data. The VIEWS Web site has been maintained by VISTAS and the other regional planning organizations (RPOs) to provide ready access to the IMPROVE

[5] EPA's BART Guidelines at 70 FR 39164.

data and data analysis tools. Mississippi is encouraging VISTAS and the other RPOs to maintain the VIEWS or a similar data management system to facilitate analysis of the IMPROVE data. Mississippi cannot legally bind federal and state legislatures to continue to fund the monitoring program for regional haze. Mississippi's SIP adequately addresses this provision and explains how monitoring data and other information has been and will be used to determine the contribution of emissions from within the State to regional haze visibility impairment at federal Class I areas.

III. What is the effect of this final action?

Under CAA sections 301(a) and 110(k)(6) and EPA's long-standing guidance, a limited approval results in approval of the entire SIP revision, even of those parts that are deficient and prevent EPA from granting a full approval of the SIP revision.[6] Today, EPA is finalizing a limited approval of Mississippi's regional haze SIP revisions. This limited approval results in approval of Mississippi's entire regional haze SIP and all its elements. EPA is taking this approach because Mississippi's SIP will be stronger and more protective of the environment with the implementation of those measures by the State and having federal approval and enforceability than it would without those measures being included in its SIP.

IV. Final Action

EPA is finalizing a limited approval of revisions to the Mississippi SIP submitted by the State of Mississippi on September 22, 2008, and May 9, 2011, as meeting some of the applicable regional haze requirements as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–308.

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* OMB must approve all ''collections of information'' by EPA. The Act defines ''collection of information'' as a requirement for answers to ''* * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *''. 44 U.S.C. 3502(3)(A). The Paperwork Reduction Act does not apply to this action.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the federal-state relationship under the CAA, preparation of flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act (UMRA)

Under sections 202 of the UMRA of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's action does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has Federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

[6] *Processing of State Implementation Plan (SIP) Revisions,* EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I–X, September 7, 1992, (''1992 Calcagni Memorandum'') located at *http://www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf.*

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

Protection of Children From Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12 of the NTTAA of 1995 requires federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the 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).

K. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 27, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: June 13, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart Z—Mississippi

■ 2. Section 52.1270 is amended by adding two entries for Regional Haze Plan and Regional Haze Plan Update—E. I. Dupont Reasonable Progress and Mississippi Phosphates BART Determinations at the end of the table in paragraph (e) to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MISSISSIPPI NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
* *	* *	*	*	*
Regional Haze Plan	Statewide	9/22/2008	6/27/2012 [Insert citation of publication].	
Regional Haze Plan Update—E. I. Dupont Reasonable Progress and Mississippi Phosphates BART Determinations.	Statewide	5/9/2011	6/27/2012 [Insert citation of publication].	

[FR Doc. 2012–15470 Filed 6–26–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 93

Determining Conformity of Federal Actions to State or Federal Implementation Plans

CFR Correction

■ In Title 40 of the Code of Federal Regulations, parts 87 to 95, revised as of July 1, 2011, on page 579, in § 93.118, paragraph (e)(2) is corrected to read as follows:

§ 93.118 Criteria and procedures: Motor vehicle emissions budget.

* * * * *

(e) * * *

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(2) If EPA has not declared an implementation plan submission's motor vehicle emissions budget(s) adequate for transportation conformity purposes, the budget(s) shall not be used to satisfy the requirements of this section. Consistency with the previously established motor vehicle emissions budget(s) must be demonstrated. If there are no previously approved implementation plans or implementation plan submissions with adequate motor vehicle emissions budgets, the interim emissions tests required by § 93.119 must be satisfied.

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[FR Doc. 2012–15869 Filed 6–26–12; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0397; FRL–9350–9]

Propiconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of propiconazole in or on multiple commodities which are identified and discussed later in this document. This regulation additionally removes an established tolerance on stone fruit crop group 12, as it will be superseded by the new tolerance for stone fruit crop group 12, except plum. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective June 27, 2012. Objections and requests for hearings must be received on or before August 27, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–0397, is available either electronically through *http://www.regulations.gov* or in hard copy at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Andrew Ertman, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–9367; email address: *ertman.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0397 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 27, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0397, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket,

along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerances

In the **Federal Register** of July 20, 2011 (76 FR 43231) (FRL–8880–1), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1E7855) by IR–4,500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.434 be amended by establishing tolerances for residues of the fungicide propiconazole, 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl] methyl]-1*H*-1,2,4-triazole and its metabolites determined as 2,4,-dichlorobenzoic acid (DCBA) and expressed as parent compound, in or on bean, snap at 0.8 ppm; bean, succulent shelled at 0.15 ppm; bean, dry seed at 0.3 ppm; legume, foliage at 25 ppm; tomato at 2.5 ppm; fruit, citrus, group 10–10 at 8.0 ppm; fruit, stone, group 12, except plum at 7.0 ppm; and plum at 1.0 ppm. The petition also requested that the existing tolerance for stone fruit group 12 at 1.0 ppm be removed upon establishment of the requested tolerances. That notice referenced a summary of the petition prepared by Syngenta, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified the levels at which tolerances are being set for various commodities as well as some commodity definitions. The reason for these changes is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.* * *''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for propiconazole including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with propiconazole follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Propiconazole has low to moderate toxicity in experimental animals by the oral, dermal and inhalation routes. It is moderately irritating to the eyes, and minimally irritating to the skin. It is a dermal sensitizer. Propiconazole is readily absorbed by the rat skin with 40% absorption within 10 hours of dermal application.

The primary target organ for propiconazole toxicity in animals is the liver. Increased liver weights were seen in mice after subchronic or chronic oral exposures to propiconazole at doses greater than 50 milligrams/kilograms/day (mg/kg/day). Liver lesions such as vacuolation of hepatocytes, ballooned liver cells, foci of enlarged hepatocytes, hypertrophy and necrosis are characteristic of propiconazole toxicity in rats and mice. Mice appear to be more susceptible to its toxicity than rats. Decreased body weight gain in experimental animals was seen in subchronic, chronic, developmental and reproductive studies. Dogs appeared to be more sensitive to the localized toxicity of propiconazole as manifested by stomach irritation at 6 mg/kg/day and above.

In rabbits, developmental toxicity occurred at a higher dose than the maternally toxic dose, while in rats, developmental toxicity occurred at lower doses than the maternally toxic doses. Increased incidences of rudimentary ribs occurred in rat and rabbit fetuses. Increased cleft palate malformations were noted in two studies in rats. In one published study in rats, developmental effects (incomplete ossification of the skull, caudal vertebrae and digits, extra 14th rib and missing sternebrae, malformations of the lung and kidneys) were reported at doses that were not maternally toxic.

In the 2-generation reproduction study in rats, offspring toxicity occurred at a higher dose than the parentally toxic dose, suggesting lower susceptibility of the offspring to the toxic doses of propiconazole in this study.

Propiconazole was negative for mutagenicity in the in vitro BALB/C 3T3 cell transformation assay, bacterial reverse mutation assay, Chinese hamster bone marrow chromosomal aberration assay, unscheduled DNA synthesis studies in human fibroblasts and primary rat hepatocytes, mitotic gene conversion assay and the dominant lethal assay in mice. Hepatocellular proliferation studies in mice suggest that propiconazole induces cell proliferation followed by treatment-related hypertrophy in a manner similar to the known hypertrophic agent phenobarbital.

Propiconazole was carcinogenic to male mice. Propiconazole was not carcinogenic to rats or to female mice. The Agency classified propiconazole as a possible human carcinogen and recommended that, for the purpose of risk characterization, the reference dose (RfD) approach be used for quantification of human risk. Propiconazole is not genotoxic and this fact, together with special mechanistic studies, indicates that propiconazole is a threshold carcinogen. Propiconazole produced liver tumors in male mice only at a high dose that was toxic to the liver. At doses below the RfD, liver toxicity is not expected; therefore, tumors are also not expected.

Specific information on the studies received and the nature of the adverse effects caused by propiconazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in docket ID number EPA–HQ–OPP–2011–0397 on pages 43–49 of the document titled ''Propiconazole Human Health Risk Assessment for a Section 3 Registration on Snap beans, Succulent shelled beans, Dry Beans, and Post-harvest use on Tomato, Citrus Fruit, and Stone fruit.''

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies

toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for propiconazole used for human risk assessment is discussed in Unit B of the final rule published in the **Federal Register** of Wednesday, May 11, 2011 (76 FR 27261) (FRL–8873–2).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to propiconazole, EPA considered exposure under the petitioned-for tolerances as well as all existing propiconazole tolerances in 40 CFR 180.434. EPA assessed dietary exposures from propiconazole in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for propiconazole. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA used tolerance levels and 100 percent crop treated (PCT) for all existing and proposed uses.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA used tolerance levels and 100 PCT for all existing and proposed uses.

iii. *Cancer.* EPA determines whether quantitative cancer exposure and risk assessments are appropriate for a food-use pesticide based on the weight of the evidence from cancer studies and other relevant data. Cancer risk is quantified using a linear or nonlinear approach. If sufficient information on the carcinogenic mode of action is available, a threshold or nonlinear approach is used and a cancer RfD is calculated based on an earlier noncancer key event. If carcinogenic mode of action data are not available, or if the mode of action data determines a mutagenic mode of action, a default linear cancer slope factor approach is utilized. Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to propiconazole. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii., *chronic exposure.*

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for propiconazole. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for propiconazole in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of propiconazole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI–GROW) models the estimated drinking water concentrations (EDWCs) of propiconazole for acute exposures are estimated to be 55.78 parts per billion (ppb) for surface water and 0.64 ppb for ground water, for chronic exposures for non-cancer assessments are estimated to be 21.61 ppb for surface water and 0.64 ppb for ground water and for chronic exposures for cancer assessments are estimated to be 13.24 ppb for surface water and 0.64 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 55.8 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 21.6 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Propiconazole is currently registered for the following uses that could result in residential exposures: turf, ornamentals, and in paint. EPA assessed residential exposure using the following assumptions: Short-term risk to toddlers was assessed for incidental oral and dermal exposure. The highest incidental oral and dermal exposure scenarios are expected from residential use on turf. Short-term risk to adults was assessed for dermal and inhalation residential handler exposure as well as from post-application dermal exposure. Adult handlers have some inhalation exposure; however, based on the low vapor pressure of propiconazole, negligible post application inhalation exposure is anticipated to occur. The highest post application exposure from residential use on turf was used to assess risk to short-term aggregate exposures.

The only residential use scenario that will result in potential intermediate-term exposure to propiconazole is dermal and incidental oral post application exposure to children from wood treatment (antimicrobial use).

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Propiconazole is a member of the conazole class of pesticides. Although conazoles act similarly in plants (fungi) by inhibiting ergosterol biosynthesis, there is not necessarily a relationship between their pesticidal activity and their mechanism of toxicity in mammals. Structural similarities do not constitute a common mechanism of

toxicity. Evidence is needed to establish that the chemicals operate by the same, or essentially the same, sequence of major biochemical events (EPA, 2002). In conazoles, however, a variable pattern of toxicological responses is found. Some are hepatotoxic and hepatocarcinogenic in mice. Some induce thyroid tumors in rats. Some induce developmental, reproductive, and neurological effects in rodents. Furthermore, the conazoles produce a diverse range of biochemical events including altered cholesterol levels, stress responses, and altered DNA methylation. It is not clearly understood whether these biochemical events are directly connected to their toxicological outcomes. Thus, there is currently no evidence to indicate that conazoles share common mechanisms of toxicity and EPA is not following a cumulative risk approach based on a common mechanism of toxicity for the conazoles. For information regarding EPA's procedures for cumulating effects from substances found to have a common mechanism of toxicity, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

Propiconazole is a triazole-derived pesticide. This class of compounds can form the common metabolite 1,2,4-triazole and two triazole conjugates (triazolylalanine and triazolylacetic acid). To support existing tolerances and to establish new tolerances for triazole-derivative pesticides, including propiconazole, EPA conducted a human health risk assessment for exposure to 1,2,4-triazole, triazolylalanine, and triazolylacetic acid resulting from the use of all current and pending uses of any triazole-derived fungicide. The risk assessment is a highly conservative, screening-level evaluation in terms of hazards associated with common metabolites (*e.g.,* use of a maximum combination of uncertainty factors) and potential dietary and non-dietary exposures (*i.e.,* high end estimates of both dietary and non-dietary exposures). In addition, the Agency retained the additional 10X Food Quality Protection Act (FQPA) safety factor (SF) for the protection of infants and children. The assessment includes evaluations of risks for various subgroups, including those comprised of infants and children. The Agency's complete risk assessment is found in the propiconazole reregistration docket at *http://www.regulations.gov*, Docket Identification (ID) Number EPA–HQ–OPP–2005–0497, and an update to assess the addition of the commodities included in this action may be found in docket ID number EPA–HQ–OPP–2011–0397, in the document titled ''Common Triazole Metabolites: Updated Dietary (Food + Water) Exposure and Risk Assessment to Address The Amended Propiconazole Section 3 Registration to Add Uses on Snap beans, succulent shelled beans, dry beans, tomato (post-harvest, citrus (post-harvest), and stone fruit (post-harvest), Difenoconazole, and Flutriafol.''

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* In the developmental toxicity study in rats, fetal effects observed in this study at a dose lower than that evoking maternal toxicity are considered to be quantitative evidence of increased susceptibility of fetuses to in utero exposure to propiconazole. In the developmental toxicity study in rabbits, neither quantitative nor qualitative evidence of increased susceptibility of fetuses to in utero exposure to propiconazole was observed in this study. In the 2-generation reproduction study in rats, neither quantitative nor qualitative evidence of increased susceptibility of neonates (as compared to adults) to prenatal and/or postnatal exposure to propiconazole was observed. There is no evidence of neuropathology or abnormalities in the development of the fetal nervous system from the available toxicity studies conducted with propiconazole. In the rat acute neurotoxicity study, there was evidence of mild neurobehavioral effects at 300 mg/kg/day, but no evidence of neuropathology from propiconazole administration. Although there was quantitative evidence of increased susceptibility of the young following exposure to propiconazole in the developmental rat study, the Agency determined there is a low degree of concern for this finding and no residual uncertainties because the increased susceptibility was based on minimal toxicity at high doses of administration, clear NOAELs and LOAELs have been identified for all effects of concern, and a clear dose-response has been well defined.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for propiconazole is complete except for the lack of immunotoxicity and subchronic neutotoxicity studies. In the absence of specific immunotoxicity studies, EPA has evaluated the available propiconazole toxicity data to determine whether an additional database uncertainty factor is needed to account for potential immunotoxicity. There was no evidence of adverse effects on the organs of the immune system in any propiconazole study. In addition, propiconazole does not belong to a class of chemicals (*e.g.,* the organotins, heavy metals, or halogenated aromatic hydrocarbons) that would be expected to be immunotoxic. Based on the considerations in this Unit, EPA does not believe that conducting a special Harmonized Guideline 870.7800 immunotoxicity study will result in a POD less than the NOAEL of 10.0 mg/kg/day used in calculating the cPAD for propiconazole, and therefore, an additional database uncertainty factor is not needed to account for potential immunotoxicity.

In the absence of the subchronic neurotoxicity study, EPA has evaluated the available propiconazole toxicity data to determine whether an additional database uncertainty factor is needed to account for potential neurotoxicity after repeated exposures. With the exception of the developmental studies in the rat, there were no indications in any of the repeated dose studies that propiconazole is neurotoxic. In the developmental studies in the rat, there were some clinical signs of neurotoxicity at 300 mg/kg/day but not at lower doses. Further, there is no evidence of neuropathology or abnormalities in the development of the fetal nervous system from the available toxicity studies conducted with propiconazole. In the rat acute neurotoxicity study, there was evidence of mild neurobehavioral effects at 300 mg/kg, but no evidence of neuropathology from propiconazole administration. Based on the considerations in this Unit, EPA does not believe that conducting a Harmonized Guideline 870.6200b subchronic neurotoxicity study will result in a POD less than the NOAEL of 10 mg/kg/day used in calculating the

cPAD for propiconazole, and therefore, an additional database uncertainty factor is not needed to account for potential neurotoxicity from repeated exposures.

iii. Although an apparent increased quantitative susceptibility was observed in fetuses and offspring, for the reasons noted in this Unit residual uncertainties or concerns for prenatal and/or postnatal toxicity are minimal.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to propiconazole in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by propiconazole.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to propiconazole will occupy 77% of the aPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to propiconazole from food and water will utilize 63% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of propiconazole is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Propiconazole is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to propiconazole.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 130 for toddlers (children 1 to 2 years old), between 110 and 1700 for adults from handler activities and 290 for adults from post-application activities. Because EPA's level of concern for propiconazole is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Propiconazole is currently registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to propiconazole.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in an aggregate MOE of 74 for toddlers (children 1 to 2 years old). The aggregate MOE is 74, which is less than the target MOE of 100. However, this aggregate MOE is based on 100 PCT and tolerance-level residues concerning food exposure, conservative (protective) assumptions in the ground and surface water modeling, and similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. Additional refinements incorporating average field trial and/or percent crop treated information would result in MOEs well above the target MOE of 100. Therefore, this scenario is not of concern.

5. *Aggregate cancer risk for U.S. population.* The Agency considers the chronic aggregate risk assessment, making use of the cPAD, to be protective of any aggregate cancer risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to propiconazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology, a high performance liquid chromatography with ultraviolet detection method (HPLC/UV Method AG–671A) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established an MRL for propiconazole for any of the subject commodities in this document.

C. Revisions to Petitioned-For Tolerances

Based on the Agency's evaluation of the residue data submitted with the petition, for all proposed commodities, with the exception of the level for the citrus fruit group 10–10 (8.0 ppm), the Agency has modified the levels for which tolerances are being established. The proposed tolerances for snap bean, succulent shelled beans, stone fruit group 12 except plum, and plum are being reduced to 0.70 ppm, 0.10 ppm, 4.0 ppm, and 0.60 ppm, respectively. The proposed tolerances for foliage of legume foliage, dry bean seed, and tomato are being increased to 30 ppm, 0.40 ppm, and 3.0 ppm, respectively, and the commodity definition for legume foliage is being changed to ''vegetable, foliage of legume, group 7.'' Lastly, a tolerance for citrus oil is being established at 1000 ppm. The Agency revised these tolerance levels based on analysis of the residue field trial data

using the Agency's Tolerance Spreadsheet in accordance with the Agency's *Guidance for Setting Pesticide Tolerances Based on Field Trial Data.*

V. Conclusion

Therefore, tolerances are established for residues of propiconazole, (1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl] methyl]-1H–1,2,4-triazole) and its metabolites determined as 2,4-dichlorobenzoic acid and expressed as parent compound, in or on bean, snap at 0.70 ppm; bean, succulent shelled at 0.10 ppm; vegetable, foliage of legume, group 7 at 30 ppm; bean, dry seed at 0.40 ppm; tomato at 3.0 ppm; fruit, citrus, group 10–10 at 8.0 ppm; fruit, stone, group 12, except plum at 4.0 ppm; plum at 0.60 ppm; and citrus, oil at 1000 ppm. Additionally, the established tolerance is removed for fruit, stone, group 12 at 1.0 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 8, 2012.

Lois Rossi,

Director, Registration Division.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.434, the table in paragraph (a) is amended as follows:

■ i. Remove the entry ''fruit, stone, group 12'' and

■ ii. Add, alphabetically, the following commodities to read as follows:

§ 180.434 Propiconazole; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Bean, dry seed	0.40
Bean, snap	0.70
Bean, succulent shelled	0.10
* * * * *	
Citrus, oil	1000
* * * * *	
Fruit, citrus, group 10–10	8.0
Fruit, stone, group 12, except plum	4.0
* * * * *	
Plum	0.60
* * * * *	
Tomato	3.0
* * * * *	
Vegetable, foliage of legume, group 7	30
* * * * *	

[FR Doc. 2012–15539 Filed 6–26–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0029; FRL–9352–5]

Cyflufenamid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of cyflufenamid in or on multiple commodities which are identified and discussed later in this document. Nippon Soda Co., Ltd., c/o Nisso America, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective June 27, 2012. Objections and requests for

hearings must be received on or before August 27, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2009–0029; FRL–9352–5, is available either electronically through *http://www.regulations.gov* or in hard copy at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Samantha Hulkower, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 603–0683; email address: *hulkower.samantha@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0029 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 27, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any Confidential Business Information (CBI) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2009–0029, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm*.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets*.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of April 8, 2009 (74 FR 15971) (FRL–8407–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8F7488) by Nippon Soda Co., Ltd., c/o Nisso America, Inc., 45 Broadway, Suite 2120, New York, NY 10006. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the fungicide cyflufenamid, in or on cucurbit vegetables (crop group 9) at 0.05 parts per million (ppm); pome fruit (crop group 11), 0.05 ppm; apple, wet pomace, at 0.10 ppm; small fruit vine climbing, except fuzzy kiwifruit (subgroup 13–07F) at 0.15 ppm; grape, raisin, at 0.30 ppm, and low growing berry (subgroup 13–07G), except cranberry, at 0.20 ppm. That notice referenced a summary of the petition prepared by Nippon Soda Co., Ltd., c/o Nisso America, Inc, the registrant, which is available in the docket, at *http://www.regulations.gov*. There were no comments received in response to the notice of filing

Based upon review of the data supporting the petition, EPA has slightly increased the tolerances for pome fruit (Crop Group 11), 0.05 ppm to 0.06 ppm, and cucurbits (Crop Group 9), 0.05 to 0.07 ppm. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for cyflufenamid including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with cyflufenamid follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Cyflufenamid has low acute toxicity via the oral, dermal and inhalation routes of exposure. Though slightly irritating to the eye, cyflufenamid is not a skin irritant or sensitizer. In the mammalian toxicology database, the liver was the primary target organ for cyflufenamid toxicity. Across species, duration and gender, changes in weight, clinical chemistry and pathology indicated treatment-related perturbations in and adverse effects on liver function.

Thyroid effects due to treatment with cyflufenamid, seen only in the rat, included increased follicular cell hypertrophy (as well as increased organ weight) and neoplastic thyroid follicular adenomas. Kidney effects related to treatment included increased kidney weight accompanied by tubular vacuolation and slight decreases in sodium and chloride concentrations.

Treatment-related cardiotoxicity was noted in the rat and mouse feeding studies. Observed myocardial vacuolation and lipidosis may be attributed to decreased lipid metabolism; cyflufenamid caused an approximately 50% inhibition of carnitine palmitoyltransferase in both rat and mouse heart microsomal fractions in a non-guideline mechanistic study. Carnitine palmitoyltransferase is involved in the transport of long chain fatty acids into the mitochondrial matrix for oxidation. Fatty acid oxidation is an important source of energy for ATP production in the mitochondria.

Cyflufenamid-induced brain vacuolation was specific to the dog and not associated with any apparent clinical sign of neurotoxicity. Supplementary studies investigating this phenomenon determined that vacuolation was due to myelin edema affecting the white matter of the cerebrum and thalamus. Furthermore, this brain lesion was partially reversed after a 13-week recovery period (following 90-day exposure) and fully reversed after a 26-week recovery period. This effect was not observed in any other species. A subchronic neurotoxicity study in rats showed no evidence of neurotoxicity.

Effects on reproductive organs and/or parameters were noted in several subchronic studies at doses greater than the respective Lowest Observed Adverse Effect Level (LOAELs). Decreased uterus and cervix weights, adrenal cortical hypertrophy and reduced quality and quantity of spermatozoa were observed in dogs. Leydig cell hypertrophy was observed in rats and mice. It is unclear what toxicological significance should be ascribed to these findings since they may be secondary to systemic toxicity or hepatic enzyme induction. Mating performance and fertility in the P/F_0 generation were both unaffected by treatment with cyflufenamid in the 2-generation reproductive toxicity study in rats. Sex ratio, sexual maturation, estrous cyclicity, sperm quantity and quality, mating performance and fertility, gestation and viability indices in the F_1 generation were all unaffected by treatment.

Cyflufenamid is classified as ''likely to be carcinogenic to humans.'' This was based on the presence of two tumor types in two species: Thyroid follicular cell tumors in male rats and liver tumors in male mice. There is no concern for mutagenicity or clastogenicity. The unit risk, Q_1*, of cyflufenamid based upon male mouse liver combined adenoma and carcinoma tumor rates is 6.61×10^{-3} (mg/kg/day)$^{-1}$ in human equivalents.

Specific information on the studies received and the nature of the adverse effects caused by cyflufenamid as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Human Health Risk Assessment,'' docket ID number EPA–HQ–OPP–2009–0029.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for cyflufenamid used for human risk assessment is shown in Table 1 below. No hazards were identified for acute dietary across all populations. For dermal short and intermediate term exposures no adverse effects were observed in the dermal toxicity study and there are no concerns for developmental or neurological toxicities, therefore no hazards are expected for these exposure scenarios.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR CYFLUFENAMID FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/ safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Chronic dietary (All populations)	NOAEL= 4.4 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	cRfD = 0.044 mg/kg/day. cPAD = 0.044 mg/kg/day.	Combined Chronic Toxicity/Carcinogenicity Study in Rats LOAEL = 22 mg/kg/day based on decreased body weight gain; increased thyroid/parathyroid weight, increased liver weight and centrilobular hepatocytic hypertrophy.
Incidental oral short-term (1 to 30 days) and intermediate-term (1 to 6 months).	NOAEL= 5 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100.	Prenatal Developmental Study in Rabbits Maternal LOAEL = 10 mg/kg/day based on decreased body weight, body weight gain and food consumption.
Inhalation short-term (1 to 30 days) and intermediate-term (1 to 6 months).	NOAEL= 5 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100.	Prenatal Developmental Study in Rabbits Maternal LOAEL = 10 mg/kg/day based on decreased body weight, body weight gain and food consumption.
Cancer (Oral, dermal, inhalation)	Likely to be carcinogenic to humans. Quantification of cancer risk was recommended. The Q_1* value is 6.61×10^{-3} (mg/kg/day)$^{-1}$.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to cyflufenamid, EPA considered exposure under the petitioned-for tolerances. EPA assessed dietary exposures from cyflufenamid in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for cyflufenamid; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Continuing Survey of Food Intake by Individuals (CSFII). As to residue levels in food, this dietary assessment was based on average field trial residues for all proposed crops and 100% crop treated (CT). Empirical processing factors were used for apple juice and grape juice. A separate tolerance was set for grape, raisin; therefore, the processing factor for this commodity was set at 1. For all other processed commodities, Dietary Exposure Evaluation Model (DEEM) version 7.81 default processing factors were assumed.

iii. *Cancer.* Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii., *chronic exposure.*

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use PCT information in the dietary assessment for cyflufenamid. One-hundred PCT were assumed for all food commodities.

Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for cyflufenamid in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of cyflufenamid. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of cyflufenamid for acute exposures are estimated to be 1.14 parts per billion (ppb) for surface water and 4.68 ppb for ground water. Chronic exposures for non-cancer assessments are estimated to be 0.03 ppb for surface water and 4.68 ppb for ground water. Chronic exposures for cancer assessments are estimated to be 0.01 ppb for surface water and 4.68 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model.

For acute dietary risk assessment, no toxic effects attributable to a single exposure to cyflufenamid have been identified; therefore, an acute reference dose (aRfD) has not been established and an acute dietary exposure assessment was not conducted.

For chronic and cancer dietary risk assessments, the ground water concentration value of 4.68 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control,

indoor pest control, termiticides, and flea and tick control on pets).

Cyflufenamid is proposed to be registered for the following uses that could result in residential exposures: Mixing, loading, and applying a soluble concentrate formulation of cyflufenamid for treatment of ornamental plantings and trees. EPA assessed residential exposure using the following assumptions: Based on the use patterns, residential handlers could be exposed to cyflufenamid on a short-term basis. A short-term dermal endpoint was not identified; therefore, only short-term non-cancer inhalation risks and cancer risks for residential handlers were assessed.

When determining the potential for residential post-application exposure, the Agency considers foliar residues, leaf to skin/hand residue transfer, children's hand-to-mouth residue transfer, and exposure time. In the case of cyflufenamid, potential exposure to adults and children would be negligible for the following reasons:

- Activities such as pruning/thinning ornamentals or playing in and around ornamentals when residues may be present on the day of the application are unlikely to co-occur;
- If present, leaf to skin residue transfer would be negligible because of the minimal frequency and duration of contact;
- Children young enough to exhibit hand-to-mouth behavior would not typically play in ornamental beds or trees.

Based on the frequency of application and unlikely potential for post-application exposure, residential post-application risks were not quantitatively assessed; thus, there are no postapplication residential risk concerns for this use pattern.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA has not found cyflufenamid to share a common mechanism of toxicity with any other substances, and cyflufenamid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that cyflufenamid does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no evidence of susceptibility following *in utero* and/or postnatal exposure in the developmental toxicity studies in rats or rabbits, and in the 2-generation rat reproduction study. There are no residual uncertainties concerning pre- and postnatal toxicity and no neurotoxicity concerns.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for cyflufenamid is complete, with the exception of an acute neurotoxicity study (ACN, OPPTS 870.6200a). The absence of this study does not raise any uncertainties with regard to the safety of infants and children for the following reasons. First, no acute affects have been attributed to cyflufenamid. In an acute oral toxicity study, adverse effects were noted on the day of administration (limit dose) but not thereafter; clinical signs of piloerection, hunched posture, unsteady gait, pallid extremities, increased salivation, ungroomed appearance and abnormal respiration were observed in the majority of animals receiving 5,000 mg/kg and generally resolved by Day 2 of the study. Second, an acceptable, guideline subchronic neurotoxicity study is available and in it repeat exposure to doses up to approximately 500 mg/kg/day did not elicit any neurotoxic effects as assessed in the functional observational battery, motor activity, neurohistopathology or brain morphometrics. Third, cyflufenamid is not an apparently neurotoxic chemical based on clinical toxicity assessments incorporated within the developmental and chronic rat studies. In several short-term studies in rats (subacute and subchronic feeding, plaque-forming cell assay, one-generation pilot, developmental toxicity), no neurobehavioral signs were observed at the highest doses tested. While the relevant and reversible effect of brain vacuolation was observed in the subchronic dog study at approximately 70 mg/kg/day, it is observed in the absence of overt neurotoxicity and nowhere else in the toxicology database. Finally, based on this information, an acute neurotoxicity screening test is very unlikely to yield a point of departure less than the chronic NOAEL of 4.4 mg/kg/day if any adverse effects are observed at all. Even if the chronic point of departure was used in assessing acute risk, there would be no risk concern based on acute dietary exposure.

ii. There is no indication that cyflufenamid is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that cyflufenamid results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The chronic dietary assessment assumed 100% crop treated for all commodities and utilized average field trial residues for all proposed crops, default and empirical processing factors. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to cyflufenamid in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by cyflufenamid.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer

risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, cyflufenamid is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to cyflufenamid from food and water will utilize 1% of the cPAD for all infants (<1 year old) the population group receiving the greatest exposure.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because no short-term adverse effect was identified, cyflufenamid is not expected to pose a short-term risk.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because no intermediate-term adverse effect was identified, cyflufenamid is not expected to pose a intermediate-term risk.

5. *Aggregate cancer risk for U.S. population.* Aggregate cancer exposure takes into account residential handler exposure, plus chronic exposure to food and water (considered to be a background exposure level). The aggregate cancer risk (food, water, and residential) is 9.7×10^{-7}.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to cyflufenamid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate multiresidue methods test data for cyflufenamid were submitted. Acceptable recoveries of cyflufenamid from a non-fatty matrix (grape) were achieved under Protocol E. Acceptable recoveries from a fatty matrix (milk) were also achieved under Protocol F. EPA recommends that Food and Drug Administration (FDA) multiresidue methods be used as the primary enforcement method. The submitted data will be forwarded to the FDA for further evaluation.

Adequate enforcement methodologies are available to enforce the tolerance expression. The LC/MS/MS method (Method 070276) was submitted for the determination of cyflufenamid residues in/on pome fruit, cucurbit vegetables, grapes, and strawberries. The proposed enforcement method (Method 070276) which monitors only one transition ion, in combination with the FDA multiresidue method meets the OPPTS Residue Chemistry Test Guidelines for acceptable tolerance enforcement methods (SOP Number ACB–019). An enforcement method for livestock commodities is not needed because tolerances for cyflufenamid residues of concern in meat, milk, poultry, and eggs are not required to support the proposed uses based on the results of the goat metabolism study and the calculated dietary burden.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established a MRL for cyflufenamid. Cyflufenamid is not registered in Canada.

C. Revisions to Petitioned-For Tolerances

The EPA increased the proposed tolerance for pome fruit crop group 11 from 0.05 ppm to 0.06 ppm and for cucurbit crop group 9 from 0.05 ppm to 0.07 ppm. These changes were made by EPA based on North American Free Trade Agreement (NAFTA) tolerance calculation procedures according to the Standard Operating Procedure (SOP) *Guidance for Setting Pesticide Tolerances Based on Field Trial Data.*

V. Conclusion

Therefore, tolerances are established for residues of cyflufenamid, in or on Apple, wet pomace, 0.10 ppm; Berry, low growing, subgroup 13–07G, except cranberry, 0.20 ppm; Fruit, pome, group 11, 0.06 ppm; Fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13–07F, 0.15 ppm; Grape, raisin, 0.30 ppm; Vegetable, cucurbit, group 9, 0.07 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers,

and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 15, 2012.

Steven Bradbury,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.667 is added to subpart C to read as follows:

§ 180.667 Cyflufenamid, tolerance for residues.

(a) *General.* Tolerances are established for residues of the fungicide cyflufenamid, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only cyflufenamid, [*N(Z)*]-N-[[(cyclopropylmethoxy)amino][2,3-difluoro-6-(trifluoromethyl)phenyl] methylene]benzeneacetamide.

Commodity	Parts per million
Apple, wet pomace	0.10
Berry, low growing, subgroup 13–07G, except cranberry	0.20
Fruit, pome, group 11	0.06
Fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13–07F	0.15
Grape, raisin	0.30
Vegetable, cucurbit, group 9	0.07

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 2012–15595 Filed 6–26–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 11–110; WT Docket No. 12–64; FCC 12–55]

Channel Spacing and Bandwidth Limitations for Certain Economic Area (EA)-Based 800 MHz Specialized Mobile Radio Licensees

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (FCC) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's rules to permit Economic Area (EA)-based 800 MHz Specialized Mobile Radio (SMR) licensees to exceed a legacy channel spacing requirement and bandwidth limitation.

DATES: Section 90.209(b)(7) will become effective July 9, 2012.

FOR FURTHER INFORMATION CONTACT: Brian Regan, Mobility Division, Wireless Telecommunications Bureau, at (202) 418–2849, or email: *brian.regan@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that on May 16, 2012 OMB approved, for a period of three years, the information collection requirements contained in the Commission's *Report and Order,* FCC 12–55. The OMB Control Number is 3060–1170. The Commission publishes this notice as an announcement of such approval. Because the information collection was pre-approved prior to the adoption or publication of the final rule, the effective date of this information collection is 30 days after the final rule under FCC 12–55 is published in the **Federal Register**. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1170, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

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

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that on May 16, 2012 it received OMB pre-approval for the information collection requirements contained in the modifications to the Commission's rules found in 47 CFR 90.209(b)(7).

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

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1170.

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

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

OMB Control Number: 3060–1170.

OMB Approval Date: May 16, 2012.

OMB Expiration Date: May 31, 2015.

Title: Section 90.209(b)(7)—Bandwidth limitations.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 27 respondents; 25 responses.

Estimated Time per Response: 0.5 up to 8.4 hours.

Frequency of Response: On occasion, third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 22 hours.

Total Annual Cost: $52,500.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: None.

Needs and Uses: This information will be used to help ensure that 800 MHz public safety licensees are not impacted by EA-based 800 MHz SMR licensees exceeding the channel spacing and bandwidth requirement in part 90 of the Commission's rules as modified under FCC 12–55. Pursuant to this notice, 800 MHz public safety licensees within the notice area will be able to monitor their networks for any increase in harmful interference in and around the time that an EA-based 800 MHz SMR licensee begins operations that exceed the existing channel spacing and bandwidth limitation in part 90.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2012–15627 Filed 6–26–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 369

[Docket No. FMCSA–2012–0020]

RIN–2126–AB48

Rescission of Quarterly Financial Reporting Requirements

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Direct final rule.

SUMMARY: By direct final rule, the Federal Motor Carrier Safety Administration (FMCSA) eliminates the quarterly financial reporting requirements for certain for-hire motor carriers of property (Form QFR) and for-hire motor carriers of passengers (Form MP–1). This paperwork burden can be removed without an adverse impact on safety or the Agency's ability to maintain effective commercial regulations over the for-hire trucking and passenger-carrying industries.

DATES: This rule is effective August 27, 2012, unless an adverse comment, or notice of intent to submit an adverse comment, is either submitted to our online docket via *http://www.regulations.gov* on or before July 27, 2012 or reaches the Docket Management Facility by that date. If an adverse comment, or notice of intent to submit an adverse comment, is received by July 27, 2012, we will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

ADDRESSES: You may submit comments identified by docket number FMCSA–2012–0020 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, email or call Ms. Vivian Oliver, Office of Research and Information Technology, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590; Telephone 202–366–2974; email *Vivian.Oliver@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation and Comments

If you would like to participate in this rulemaking, you may submit 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.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA–2012–0020), 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, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. As a reminder, FMCSA will only consider adverse comments as defined in 49 CFR 389.39(b) and explained below.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Rule'' and insert ''FMCSA–2012–0020'' in the ''Keyword'' box. Click ''Search,'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

B. Viewing Comments and Documents

To view comments, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''FMCSA–2012–0020'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the Internet, you may also view the docket online by visiting 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. e.t., Monday through Friday, except Federal holidays.

C. 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).

II. Regulatory Information

FMCSA publishes this direct final rule under 49 CFR 389.11 and 389.39, because the Agency has determined that the rule makes non-controversial, minor amendments to 49 CFR part 369 that will reduce reporting requirements for certain for-hire motor carriers. FMCSA does not expect any adverse comments. If no adverse comments or notices of intent to submit an adverse comment are received by July 27, 2012, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, we will publish a document in the **Federal Register** stating that no adverse comments were received and confirming that this rule will become effective as scheduled. However, if we receive any adverse comments or notices of intent to submit an adverse comment, we will publish a document in the **Federal Register** announcing the withdrawal of all or part of this direct final rule. If we decide to proceed with a rulemaking following receipt of any adverse comments, we will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered ''adverse'' if the comment explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change.

III. Background

Annual Financial Reporting Requirements

Section 14123 of title 49, United States Code, requires the filing of annual financial reports by certain for-hire motor carriers of property and household goods (Form M).

The annual reporting program was implemented on Dec. 24, 1938 (3 FR 3158) (the first annual report for 1938 was due by Mar. 31, 1939) and subsequently was transferred from the Interstate Commerce Commission (ICC) to the U.S. Department of Transportation's (DOT) Bureau of Transportation Statistics (BTS) on January 1, 1996. The Secretary of DOT delegated to BTS the responsibility for the program on December 17, 1996 (61 FR 68162–02). Responsibility for collection of Form M (for-hire property carriers, including household goods carriers) and Form MP–1 (for-hire passenger carriers), including quarterly reporting requirements for such forms (Form QFR), was transferred from the BTS to the FMCSA on August 17, 2004 (69 FR 51009), and the regulations were redesignated as 49 CFR part 369 on August 10, 2006 (71 FR 45740). FMCSA has continued to collect carriers' annual reports and to furnish copies of the reports requested under the Freedom of Information Act.

Quarterly Financial Reporting

Subsection 14123(a)(2) of title 49, United States Code, allows the Agency to require quarterly financial reports from for-hire property and passenger carriers, but it does not mandate that the Agency require these reports to be submitted. These requirements are included in 49 CFR Part 369 and apply to Class I (average annual gross transportation operating revenues of $10 million or more) and Class II (average annual gross transportation operating revenues of $3 million dollars or more, but less than $10 million) for-hire motor carriers of property. The requirements also apply to Class I (average annual gross transportation operating revenues of $5 million or more) for-hire motor carriers of passengers.

E.O. 13563 Improving Regulation and Regulatory Review

On January 18, 2011, the President issued Executive Order 13563, ''Improving Regulation and Regulatory Review'' (76 FR 3821, January 21, 2011), which required agencies, among other things, to prepare plans for reviewing existing rules. On February 16, 2011, DOT published a notice requesting comments on its regulatory review plan (76 FR 8940). A public meeting on this issue was held on March 14, 2011. DOT placed all of the comments it received in docket DOT–OST–2011–0025, along with a transcript of the March 14 meeting. DOT received 102 comments, many offering multiple suggestions. One person argued that the financial reporting requirements transferred from the ICC to FMCSA provide no discernible benefits to the government or industry.

FMCSA rescinds the quarterly financial reporting requirements for certain for-hire motor carriers of property (Form QFR) and for-hire motor carriers of passengers (Form MP–1). This burden can be removed without an adverse impact on safety or the Agency´s ability to maintain effective commercial regulations over the for-hire trucking and passenger-carrying industries. FMCSA does not currently use the quarterly reports because the reports cover a small subset of the motor carriers of property and motor carriers of passengers that are subject to the Agency's safety oversight and the financial reporting data is not necessary to monitor carriers' safety performance. The information collected does not currently support any Agency regulatory function, nor does it have practical utility for the Agency or for those carriers who must comply with the reporting requirement.

This direct final rulemaking is non-controversial because it ''Make[s] minor changes to rules regarding statistics and reporting requirements, such as a change in reporting period (for example, from quarterly to annually) or eliminat[es] a type of data collection no longer necessary'' 49 CFR 389.39(a)(5). Elimination of the outdated and unnecessary quarterly reporting requirement falls squarely within the intended purpose of a direct final rule. FMCSA, therefore, finds there is good cause to dispense with the normal notice and comment procedures since reducing the reporting requirement is not likely to be controversial. Consequently, receipt of public comments prior to finalizing this action is unnecessary. 49 CFR 389.11.

IV. Discussion of the Rule

For the reasons discussed in the Background section, above, FMCSA amends 49 CFR part 369 by eliminating the quarterly reporting requirement under 49 CFR 369.1 and 369.4. In addition, FMCSA makes other conforming technical amendments to 49 CFR 369.8, 369.9, and 369.11.

In the course of redesignating 49 CFR part 1420 as 49 CFR part 369 in 2006 (August 10, 2006, 71 FR 45740), the authority citation for part 369 was inadvertently corrupted by adding references to (1) 5 U.S.C. 553 and 559 of the Administrative Procedure Act relating to rulemaking and administrative law judges, and (2) 16 U.S.C. 1456, a provision of the Coastal Zone Management Act (CZMA) of 1972. These statutes provide no authority for part 369 and the references have therefore been removed.

V. Regulatory Analyses

When developing this direct final rule, FMCSA considered numerous statutes and executive orders related to rulemaking. The Agency's analyses are summarized below.

A. Regulatory Planning and Review

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) as supplemented by E.O. 13563 (76 FR

3821, January 18, 2011), FMCSA must determine whether a regulatory action is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the E.O. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) has not reviewed it under that Order. This rule will not have a significant economic impact. In fact, elimination of the reporting requirement will, if anything, have a beneficial economic impact on industry.

B. Small Entities

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, Title II, 110 Stat. 857), FMCSA is not required to prepare a final regulatory flexibility analysis under 5 U.S.C. 604(a) for this final rule because the agency has not issued an NPRM prior to this action.

C. Paperwork Reduction Act

This rule eliminates two quarterly reporting requirements that are currently reported to OMB under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520). Form QFR Quarterly for property carriers, authorized by OMB under information collection 2126–0033, is two pages long and takes approximately 27 minutes for each of the approximately 111 carriers to complete. This report is filed 4 times per year, so the total burden hour impact per filer per year is $4 \times 27/60 = 1.8$ hours. Multiplying this figure by the 111 carriers that file quarterly reports yields a total burden estimate of 200 hours.

FMCSA assumes that completion and submission of Form QFR is performed by an accountant designated by the business entity. The median salary of an accountant in the truck transportation industry is $25.90 per hour (BLS, May 2010).[1] Two adjustments are made to this hourly compensation estimate. First, employee benefits are estimated at 50.0 percent of the employee wage.[2] Second, employee wage and benefits are increased by 27 percent to include relevant firm overhead.[3] Applying the estimated 50.0 percent factor for employee benefits and 27 percent for overhead results in $49.34 in hourly compensation for the accountant ($\$25.90 \times (1 + 0.50) \times (1 + 0.27) = \$49.34$). The total annual salary cost burden associated with the filings is $9,868 ($\$49.34 \times 200$ hours = $9,868.00).

The Class I passenger carrier financial quarterly survey (MP–1 Quarterly), which is two pages long and takes about 18 minutes to complete for the estimated 2 participating carriers is authorized by OMB under information collection 2126–0031. Since this report is also filed 4 times per year, the total burden hours associated with the requirement are $4 \times 18/60 \times 2 = 2.4$ hours.

FMCSA believes the completion and submission of Form MP–1 is typically performed by a business and financial operations expert designated by the business entity because of the level of detail in the financial reports. The median salary of a business and financial operations expert in the interurban and rural bus transportation industry is $26.41 per hour (BLS, May 2010).[4] Two adjustments are made to this hourly estimate. First, employee benefits are estimated at 50.0 percent of the employee wage.[5] Second, employee wage and benefits are increased by 27 percent to include relevant firm overhead.[6] Applying the estimated 50.0 percent factor for employee benefits and 27 percent for overhead results in $50.31 in hourly compensation for the business and financial operations expert ($\$26.41 \times (1 + 0.50) \times (1 + 0.27) = \$50.31$). The total annual salary cost burden associated with the filings is $121 ($\$50.31 \times 2.4$ hours = $120.74, rounded to the nearest dollar).

Collectively, eliminating these reporting requirements reduces the burden to industry by 202.4 hours and $9,989.

The PRA requires that each agency ''shall certify * * * that each collection of information * * * is necessary for the proper performance of the functions of the agency, including that the information has practical utility.'' 44 U.S.C. 3506(c)(3)(A); 5 CFR 1320.5(d)(1)(iii). FMCSA can no longer certify that the quarterly requirements are ''necessary for the proper performance of the functions of the agency.'' Therefore, FMCSA is discontinuing the quarterly reporting requirements.

D. Federalism

A rule has federalism implications under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on the States. FMCSA has analyzed this rule under that Order and have determined that it does not have federalism implications.

E. 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

[1] Bureau of Labor Statistics, ''Occupational Employment Survey''. May 2010. *http://www.bls.gov/oes/current/naics3_484000.htm* (accessed December 15, 2011). North American Industry Classification System (NAICS) 484000, Truck Transportation, Standard Occupational Classification (SOC) 13–2011, Accountants and Auditors.

[2] FMCSA estimates this 50% employee benefit rate by using the private industry average wage ($16.03 per hour) and benefit information ($8.01 per hour) for production, transportation, and moving material workers. Benefits thus amount to 50.0 percent of wages (0.500 = $8.01/$16.03). From ''Employer Costs for Employee Compensation—September 2010''. Accessed on 23–August–2011 at *http://www.bls.gov/news.release/pdf/ecec.pdf.*

[3] Berwick, Farooq. ''Truck Costing Model for Transportation Managers''. Upper Great Plains Transportation Institute, North Dakota State University (2003) accessed on 23–August–2011 at *http://ntl.bts.gov/lib/24000/24200/24223/24223.pdf.*

[4] Bureau of Labor Statistics, ''Occupational Employment Survey''. May 2010. *http://www.bls.gov/oes/current/naics4_485200.htm* (accessed December 15, 2011). North American Industry Classification System (NAICS) 485200, Interurban and Rural Bus Transportation, Standard Occupational Classification (SOC) 13–2000, Business and Financial Operations Occupations.

[5] FMCSA estimates this 50% employee benefit rate by using the private industry average wage ($16.03 per hour) and benefit information ($8.01 per hour) for production, transportation, and moving material workers. Benefits thus amount to 50.0 percent of wages (0.500 = $8.01/$16.03). From ''Employer Costs for Employee Compensation—September 2010''. Accessed on 23–August–2011 at *http://www.bls.gov/news.release/pdf/ecec.pdf.*

[6] Berwick, Farooq. ''Truck Costing Model for Transportation Managers''. Upper Great Plains Transportation Institute, North Dakota State University (2003) accessed on 23–August–2011 at *http://ntl.bts.gov/lib/24000/24200/24223/24223.pdf.*

State, local, or tribal government, in the aggregate, or by the private sector of $143.1 million (which is the value of $100,000,000 in 2010 after adjusting for inflation) or more in any 1 year. This rule would not result in such an expenditure.

F. Taking of Private Property

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

G. Civil Justice Reform

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

H. Protection of Children

FMCSA has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not economically significant and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

I. Energy Effects

FMCSA has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and will not 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.

J. Environment

The Agency analyzed this direct final rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, published March 1, 2004 (69 FR 9680), that this action is categorically excluded under two categorical exclusions (CEs) in the Order from further environmental documentation. These are found in Appendix 2, paragraph 4, which covers data and information gathering, and Appendix 2, paragraph 6(y)(2) concerning reports provided by motor carriers. This direct final rulemaking makes minor changes to rules regarding ''a change in reporting period (for example, from quarterly to annually) or eliminating a type of data collection no longer necessary,'' as authorized by 49 CFR 389.39(a)(5). The action involves no extraordinary circumstances that would have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not result in any potential increase in emissions that are above the general conformity rule's *de minimis* emission threshold levels (40 CFR 93.153(c)(2)). This action merely eliminates a reporting requirement.

The Categorical Exclusion Determination is available for inspection or copying in the regulations.gov Web site listed under **ADDRESSES**.

List of Subjects in 49 CFR Part 369

Motor carriers, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA amends 49 CFR part 369 in title 49, Code of Federal Regulations, chapter III, subchapter B, as follows:

PART 369—[AMENDED]

■ 1. The authority citation for part 369 is revised to read as follows.

Authority: 49 U.S.C. 14123; 49 CFR 1.73.

■ 2. Amend § 369.1, by removing paragraph (b) and redesignating paragraph (c) as paragraph (b) and revising it to read as follows.

§ 369.1 Annual reports of motor carriers of property, motor carriers of household goods, and dual property carriers.

* * * * *

(b) *Where to file report.* Carriers must file the annual reports with the Federal Motor Carrier Safety Administration at the address in § 369.6. You can obtain blank copies of the report forms from the Federal Motor Carrier Safety Administration Web site *http://www.fmcsa.dot.gov/forms/reporting/mcs_info.htm#fos*.

■ 3. Revise § 369.4 to read as follows.

§ 369.4 Annual reports of Class I carriers of passengers.

(a) All Class I motor carriers of passengers shall complete and file Motor Carrier Annual Report Form MP–1 for Motor Carriers of Passengers (Form MP–1).

(b) *Accounting period.* (1) Motor Carrier Annual Report Form MP–1 shall be used to file annual selected motor carrier data.

(2) The annual accounting period shall be based either:

(i) On the 31st day of December in each year, or

(ii) An accounting year of thirteen 4-week periods ending at the close of the last 7 days of each calendar year.

(3) A carrier electing to adopt an accounting year of thirteen 4-week periods shall file with the FMCSA a statement showing the day on which its accounting year will close. A subsequent change in the accounting period may not be made except by authority of the FMCSA.

(c) The annual report shall be filed on or before March 31 of the year following the year to which it relates. The annual report shall be filed in duplicate with the Federal Motor Carrier Safety Administration at the address in § 369.6. Copies of Form MP–1 may be obtained from the FMCSA.

■ 4. Amend § 369.8 by revising paragraph (d) and removing the table following it, to read as follows.

§ 369.8 Requests for exemptions from filing.

* * * * *

(d) *When requests are due.* The timing of a request for an exemption from filing is the same as the timing for a request for an exemption from public release contained in § 369.9(d). For Annual Form M, both the report and the request are due by March 31.

* * * * *

■ 5. Amend § 369.9 by removing paragraph (d)(4) and revising paragraph (e)(4) and removing the table following it, to read as follows.

§ 369.9 Requests for exemptions from public release.

* * * * *

(e) * * *

(4) FMCSA will grant or deny each request no later than 90 days after the request's due date as defined in paragraph (d) of this section. The decision by FMCSA shall be administratively final. For Annual Form M, both the report and the request are due by March 31, and the decision is due by June 30.

* * * * *

§ 369.11 [Removed]

■ 6. Remove § 369.11.

Issued on: June 22, 2012.

Anne S. Ferro,

Administrator.

[FR Doc. 2012–15744 Filed 6–26–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 385

Change to FMCSA Policy on Calculating and Publicizing the Driver, Vehicle, and Hazardous Materials Out-of-Service Rates and Crash Rates

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

ACTION: Notice of amendment to enforcement policy.

SUMMARY: As stated in 49 CFR 385.407, in order for FMCSA to issue a hazardous materials safety permit (HMSP), a motor carrier must not have a crash rate, or driver, vehicle, or hazardous materials (HM) Out-of-Service (OOS) rate in the top 30 percentile of the national average.

The current method for determining the qualifying crash and OOS rates under this rule, in effect since the inception of the HMSP program, utilizes two years of inspection data from FMCSA's Motor Carrier Management Information System (MCMIS) to calculate the OOS rates representing the top or worst-performing 30 percent of the national average. FMCSA has been recalculating the threshold crash and OOS rates every two years, using MCMIS data from the preceding two years.

This notice of amendment explains the new methodology the Agency will begin to use to calculate the threshold crash rate and driver, vehicle, and HM OOS rates that qualify or disqualify a carrier for HMSP issuance. The revised methodology uses eight years of data from MCMIS (data from 2003 to 2010) to determine the national average for eligible crash and OOS thresholds that qualify for an HMSP. These rates will remain static rather than change every two years. The Agency decided that crash and OOS rates, which remain static over a longer period of time, will improve safety by providing a clearly identifiable standard for industry compliance and minimize the burden on motor carriers and the HM industry by allowing more appropriate measures that ensure eligibility for the HMSP. The calculations of crash and OOS rates in this notice of amendment will be implemented immediately and posted to FMCSA's Web site. These new static rates will remain in effect until further notice.

DATES: *Effective Date:* This policy amendment becomes effective June 27, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Roxane Greene, at *Roxane.Greene@dot.gov* or phone (202) 366–0735; or John Hardridge, at *John.Hardridge@dot.gov* or or (202) 366–0811. Both staff members may be reached at Federal Motor Carrier Safety Administration, Office of Enforcement and Program Delivery, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The HMSP requirement became effective for motor carriers as of January 1, 2005. Additionally, 49 CFR part 385, subpart E identifies which motor carriers must hold a HMSP, and establishes the application process for a HMSP. It also specifies the need for a carrier's crash rate and driver, vehicle, and HM OOS rates to be below the 70th percentile and describes other conditions that must be satisfied to qualify for this permit. As specified in § 385.407(a)(2), FMCSA will not issue a HMSP to a motor carrier having a crash rate in the top 30 percent of the national average, or a driver, vehicle, HM, or total OOS rate in the top 30 percent of the national average, as indicated in MCMIS. The methodologies for calculating these rates are posted on the FMCSA Web site *www.fmcsa.dot.gov*. More conditions are set forth in § 385.407 that require a carrier to have a Satisfactory safety rating, certify that it has a satisfactory security program, and be properly registered with the Pipeline and Hazardous Materials Safety Administration (PHMSA). The carrier also is required to submit proof of minimum levels of financial responsibility as stated in § 387.9.

Pursuant to 49 CFR 390.19, a motor carrier is required to file its MCS–150 form with FMCSA every two years. The application for the HMSP was incorporated into the MCS–150 as an expanded version of the form entitled ''MCS–150B or Combined Motor Carrier Identification Report and HM Permit Application.'' Thus, the HMSP must be renewed every two years. Revision to the calculations of the crash and OOS rates will not change this requirement.

On November 7, 2007, FMCSA published a Notice of Enforcement Policy (72 FR 62795) explaining the methodology used by the Agency to calculate those averages. The rates had been calculated using roadside inspection data in MCMIS for both HM and non-HM inspections for driver and vehicle OOS rates. For the HM OOS rate, only inspections that indicated that HM was present were used. The applicant motor carriers needed to have a least three roadside inspections indicated in MCMIS for each of the 2-year rate calculation timeframes. For instance, when calculating the 2005–2006 registration cycle rates, in order to be included in the calculation, a motor carrier would had to have at least three roadside inspections during the 2003–2004 time period.

During the course of the program, the calculated 70th percentile OOS thresholds have fluctuated causing uncertainty in the industry. It has become increasingly more difficult for a motor carrier to attain or retain a HMSP because it must maintain OOS rates below 7.14% for drivers, 33.33% for vehicles, and 3.45% for HM. These rates compare with the national averages for all motor carriers at 5.51%, 20.72%, and 4.50% respectively.

A historical picture of the OOS and crash rates, data from the entire eight-year period since the inception of the program, was used in the calculations (2003–2010) for the fixed rates. This provides a balanced perspective of motor carrier performance over a longer period of time and virtually eliminates the short term fluctuations that some motor carriers experience. It is also reflective of all of the time periods used to calculate rates for the present and three former registration periods. The threshold rate calculation included only carriers that had at least 12 inspections over the 8 years previously described, making this analysis comparable to the 3-inspections-per-cycle method used in previous calculations. The main difference in the fixed-rate calculations when compared to previous 2-year calculations is that, due to the number of inspections required during the extended timeframe (12), the number of inspections with an HM OOS rate of 0.00% decreased. This resulted in raising the overall HM OOS average for the population of motor carriers used in the calculation, and while higher, it is a more appropriate indicator of placarded motor carriers' roadside inspection HM OOS performance.

In order to calculate the fixed crash rate, a MCMIS snapshot was taken on February 24, 2012. The 8-year period was divided into four 2-year periods reflecting fiscal years (FY) 2003–2004, FY 2005–2006, FY 2007–2008, and FY 2009–2010. Qualifying motor carriers had at least 2 crashes in at least one 2-

year period. Then the number of power units for each qualifying 2-year period was captured based on snapshots taken immediately after the end of each FY. The crash rate for each 2-year period motor carrier was then determined in each time period by taking the number of crashes indicated and dividing by the number of power units times two. Finally, all carrier/time period combinations were ranked based on crash rate, with a resulting crash rate threshold at the 70th percentile of 0.13636.

Since this evaluation criterion is a departure from the methods used in the previous years of the HMSP program, the OOS rates and 70th percentile thresholds have shifted, and in some instances increased when compared to previous years. The driver and HM OOS rates are higher because the calculations included carriers that have 12 inspections over 8 years as opposed to only 3 inspections over 2 years. There are more companies with non-zero OOS rates, and thus the 70th percentile is higher than what was previously seen with using only 3 inspections over a 2-year timeframe. FMCSA sees this as a necessary adjustment to the methodology based on experience over the life of the program, that more accurately reflects motor carrier inspection activity and performance with no diminution of safety.

Utilizing the methodologies described above, the top (worst-performing) 30th percentile of the National averages were determined by establishing a cut-off at the numerical threshold value located at the 70th percentile in each category using eight years of data. All carriers with a driver, vehicle, or HM OOS rate less than the cut-off are considered to be below the National Average for each category, and, therefore, eligible for participation in the program. Carriers with a driver, vehicle, or HM OOS rate that is equal to or greater than the cut-off in each category are in the 30th percentile, or the worst-performing category, and will be denied an HMSP.

FMCSA Web sites,*www.fmcsa.dot.gov* and *www.safersys.org/HazMatRates.aspx* will continue to provide notice to the regulated community on how FMCSA calculates the National averages and threshold figures for the top-performing motor carrier population. The new threshold rates will remain effective for all future registration periods until such time as FMCSA can incorporate eligibility standards into the Safety Measurement System. These rates will provide the standard for granting or denying HMSPs beginning immediately, and will remain in effect until further notice.

Rates

Table 1 below shows the calculated National average cut-off threshold rates established for past Registration Cycles and the Fixed Rates:

TABLE OF CALCULATED THRESHOLD RATES FOR PREVIOUS REGISTRATION CYCLES AND FIXED RATES

Registration cycles	Crash rate	Driver OOS rate (percent)	Vehicle OOS rate (percent)	HM OOS rate (percent)
2005 & 2006	0.125	8.92	33.3	5.88
2007 & 2008	0.125	9.52	33.3	6.06
2009 & 2010	0.125	9.09	33.3	4.76
2011 & 2012	0.114	7.14	33.3	3.45
Fixed Rates	0.136	9.68	33.3	6.82

Notes:

1. Rates for registration cycles 2005–2006, 2007–2008, and 2009–2010 were calculated on Calendar Year MCMIS data. For instance, the 2005–2006 rates were based on CY 2003–2004 data and issued on December 31, 2004, for implementation on January 1, 2005.
2. Rates for registration cycle 2011–2012 were calculated using MCMIS Fiscal Year 2009–2010 data and issued on September 30, 2010, 90 days prior to implementation on January 1, 2011.

Carriers' Calculation of Their OOS Rates and Crash Rate

When a motor carrier submits an HMSP application through the MCS–150B process, FMCSA examines the current one year (12 months) of the carrier's crash and OOS data. This policy is consistent with the Agency's practice of reviewing one year of motor carrier's records during the conduct of a compliance review. The period examined is the 12 months immediately preceding the date that the application is processed in MCMIS. A motor carrier should therefore, calculate its vehicle, driver, and HM OOS rates in each of the three categories by examining the number of inspections and OOS violations during the preceding 12-month period before applying. To determine its OOS rate, the carrier would divide the number of OOS inspections by the total number of inspections for each category. The resulting figure is the motor carrier's OOS rate for that category. For driver and vehicle OOS calculations, the carrier should use all inspections, both HM and non-HM. For the HM OOS calculation, the carrier should use only HM inspections. The FMCSA does not consider a single OOS violation in any one category to be statistically valid. Thus, OOS rates will be calculated only for carriers with more than one OOS violation in the previous 12-month period.

FMCSA likewise examines one year of crash data to determine a carrier's crash rate. A motor carrier should divide the number of crashes for the previous 12-month period by the total number of power units that it operated during that period, prior to applying. For example, if a motor carrier had 2 crashes and 10 power units, the crash rate would be 0.20 based upon a calculation of (2/10 = 0.20), and would thus be ineligible for obtaining an HMSP because the carrier's crash rate is above the established 70th percentile of 0.136. FMCSA does not consider a single crash to be statistically valid. Thus, crash rates will be calculated only for carriers with more than one crash in the previous 12-month period.

Upcoming HMSP Program Registration Cycles

While the rates will remain fixed, motor carriers will still be required to update their MCS–150B every two years. The OOS rates in this document are effective for the remainder of the current registration cycle (January 1, 2011 through December 31, 2012) and all 2-year registration cycles starting with the cycle that begins on January 1, 2013. This method for determining crash and driver, vehicle, and HM OOS rates will remain in effect until such time as FMCSA can incorporate eligibility standards into the Safety Measurement System or otherwise updated through the publication of a notice.

Issued on: June 21, 2012.

Anne S. Ferro,

Administrator.

[FR Doc. 2012–15740 Filed 6–26–12; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register
Vol. 77, No. 124
Wednesday, June 27, 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.

SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION

5 CFR Part 9301

RIN 3460–AA03

Office of Privacy, Records, and Disclosure; Privacy Act of 1974; Proposed Implementation

AGENCY: Special Inspector General for Afghanistan Reconstruction.

ACTION: Proposed rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, the Special Inspector General for Afghanistan Reconstruction (SIGAR) gives notice of a proposed amendment to this part to exempt several systems of records maintained within the agency from certain provisions of the Privacy Act.

DATES: Comments must be received no later than July 27, 2012.

ADDRESSES: Comments should be sent to Hugo Teufel, Acting General Counsel, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202–3934. Comments will be made available for inspection upon written request. SIGAR will make such comments available for public inspection in the Office of Privacy, Records, and Disclosure, 9th Floor, 1550 Crystal Drive, Arlington, VA 22202, on official business days between the hours of 9 a.m. and 5 p.m. Eastern time. You can make an appointment to inspect comments by telephoning (703) 545–6000. All comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Kate Gastner, Public Information Manager, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202–3934, (703) 545–5993.

SUPPLEMENTARY INFORMATION: On January 28, 2008, the President signed into law the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), which created the Special Inspector General for Afghanistan Reconstruction (SIGAR). SIGAR is responsible for coordinating and conducting audits and investigations to promote efficiency and effectiveness of reconstruction programs, and to detect and prevent waste, fraud, and abuse of taxpayers' dollars. Under 5 U.S.C. 301, heads of Executive or military departments may prescribe regulations governing the conduct of its employees and the custody, use, and preservation of the agency's records, papers, and property.

SIGAR is publishing separately the notices of the new systems of records to be maintained by SIGAR.

The provisions of the Privacy Act upon which SIGAR is relying for the exemptions are 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2). Under 5 U.S.C. 552a(j)(2), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is ''maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws'', and includes information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; and reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws.

To the extent that these systems of records contain investigative material within the provisions of 5 U.S.C. 552a(j)(2), SIGAR proposes to exempt the following systems of records from various provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2):

SIGAR–04 Freedom of Information Act and Privacy Act Records;
SIGAR–05 Audit Records;
SIGAR–06 Correspondence Records;
SIGAR–07 Hotline Records;
SIGAR–08 Investigation Records;
SIGAR–09 Legal Records;
SIGAR–10 Legislative Inquiries and Correspondence.

The proposed exemption under 5 U.S.C. 552a(j)(2) for the above-referenced systems of records is from provisions 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g).

5 U.S.C. 552a(e)(4)(G) and (f)(l) enable individuals to inquire whether a system of records contains records pertaining to themselves. 5 U.S.C. 552a(d)(1), (e)(4)(H), and (f)(2), (3), and (5) grant individuals access, or concern procedures by which an individual may gain access, to records pertaining to themselves. 5 U.S.C. 552a(d)(2), (3), and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to the individual or concern related procedures, and require the agency either to amend the record or to note the disputed portion of the record, and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed.

5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. 5 U.S.C. 552a(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute that the agency made in accordance with 5 U.S.C. 552a(d) to any record that the agency disclosed to the person or agency if an accounting of the disclosure was made. 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records.

5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or Executive Order. 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. 5 U.S.C. 552a(e)(3) requires an agency to inform each individual, whom it asks to supply information, of the agency's authority for soliciting the information, whether disclosure of information is voluntary or mandatory, the principal purpose(s) for which the agency will use the information, the routine uses that may

be made of the information, and the effects on the individual of not providing all or part of the information.

5 U.S.C. 552a(e)(5) requires an agency to maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination. 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when the agency makes any record on the individual available to any person under compulsory legal process, when such process becomes a matter of public record. 5 U.S.C. 552a(g) provides for civil remedies to an individual when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when an agency fails to maintain accurate, relevant, timely, and complete records which are used to make a determination adverse to the individual, and when an agency fails to comply with any other provision of 5 U.S.C. 552a so as to adversely affect the individual.

Under 5 U.S.C. 552a(k)(1), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act to the extent that the system contains information subject to the provisions of 5 U.S.C. 552(b)(1), to protect material authorized to be kept secret in the interest of national defense or foreign policy pursuant to Executive Order.

To the extent that these systems of records contain national defense or foreign policy information within the provisions of 5 U.S.C. 55a(k)(1), SIGAR proposes to exempt the following systems of records from various provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1):

SIGAR–07 Hotline Records;
SIGAR–08 Investigation Records;
SIGAR–09 Legal Records.

The proposed exemption under 5 U.S.C. 552a(k)(1) for the above-referenced systems of records is from provisions of 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. 5 U.S.C. 552a(d)(1), (e)(4)(H), and (f)(2), (3), and (5) grant individuals access, or concern procedures by which an individual may gain access, to records pertaining to them. 5 U.S.C. 552a(d)(2), (3), and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to the individual or concern related procedures, and require the agency either to amend the record or to note the disputed portion of the record, and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed.

5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or Executive Order. 5 U.S.C. 552a(e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the above-referenced systems of records could allow individuals to learn whether they have been identified as subjects of investigation. 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records.

Under 5 U.S.C. 552a(k)(2), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is ''investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2).'' To the extent that these systems of records contain investigative material within the provisions of 5 U.S.C. 552a(k)(2), SIGAR proposes to exempt the following systems of records from various provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2):

SIGAR–04 Freedom of Information Act and Privacy Act Records;
SIGAR–05 Audit Records;
SIGAR–06 Correspondence Records;
SIGAR–07 Hotline Records;
SIGAR–08 Investigation Records;
SIGAR–09 Legal Records;
SIGAR–10 Legislative Inquiries and Correspondence.

The proposed exemption under 5 U.S.C. 552a(k)(2) for the above-referenced systems of records is from provisions 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. 5 U.S.C. 552a(d)(1), (e)(4)(H), and (f)(2), (3), and (5) grant individuals access, or concern procedures by which an individual may gain access, to records pertaining to them. 5 U.S.C. 552a(d)(2), (3), and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to the individual or concern-related procedures, and require the agency either to amend the record or to note the disputed portion of the record, and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed.

5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or Executive Order. 5 U.S.C. 552a(e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the above-referenced systems of records could allow individuals to learn whether they have been identified as subjects of investigation. 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records.

Any information from a system of records for which an exemption is claimed under 5 U.S.C. 552a(j) or (k) which is also included in another system of records retains the same exempt status such information has in the system for which such exemption is claimed.

This proposed rule is not a ''significant regulatory action'' under Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, it is hereby certified that this rule will not have significant economic impact on a substantial number of small entities. The term ''small entity'' is defined to have the same meaning as the terms ''small business,'' ''small organization'' and ''small governmental jurisdiction'' as defined in the RFA.

The proposed regulation, issued under section 522a(j)(2) and (k) of the Privacy Act, is to exempt certain information maintained by SIGAR in the above systems of records from notification, access and amendment of a record by individuals who are citizens of the United States or aliens lawfully admitted for permanent residence. In as much as the Privacy Act rights are personal and apply only to U.S. citizens or an alien lawfully admitted for permanent residence, small entities, as defined in the RFA, are not provided

rights under the Privacy Act and are outside the scope of this regulation.

Dated: June 19, 2012.

Steven J. Trent,

Acting Inspector General.

List of Subjects in 5 CFR Part 9301

Administrative practice and procedure, Freedom of information, Privacy.

For the reasons set forth above, SIGAR proposes to amend 5 CFR part 9301 as follows:

PART 9301—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for part 9301 continues to read as follows:

Authority: Privacy Act of 1974, Pub. L. No. 93–579, 88 Stat. 1896, codified at 5 U.S.C. 552a(f) (agency rules).

2. Add § 9301.20 to subpart B to read as follows:

§ 9301.20 Systems exempt in whole or in part from provisions of 5 U.S.C. 552a and this part.

(a) *In General.* In accordance with 5 U.S.C. 552a(j) and (k), SIGAR hereby exempts the systems of records identified below from the following provisions of the Privacy Act for the reasons indicated.

(b) *Authority.* These rules are promulgated pursuant to the authority vested in the Special Inspector General by 5 U.S.C. 552a (j) and (k).

(c) *General exemptions under 5 U.S.C. 552a(j)(2).* (1) Under 5 U.S.C. 552a(j)(2), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the agency or component thereof that maintains the system performs as its principal function any activities pertaining to the enforcement of criminal laws. Certain components of SIGAR have as their principal function activities pertaining to the enforcement of criminal laws and protective service activities which are necessary to assure the safety of individuals protected by SIGAR pursuant to the provisions of 18 U.S.C. 3056. This paragraph applies to the following systems of records maintained by SIGAR:

SIGAR–04 Freedom of Information Act and Privacy Act Records;
SIGAR–05 Audit Records;
SIGAR–06 Correspondence Records;
SIGAR–07 Hotline Records;
SIGAR–08 Investigation Records;
SIGAR–09 Legal Records;
SIGAR–10 Legislative Inquiries and Correspondence.

(2) SIGAR hereby exempts the systems of records listed in paragraphs (c)(1)(i) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(j)(2): 5 U.S.C. 552a(c)(3) and (4), 5 U.S.C. 552a(d)(1), (2), (3), (4), 5 U.S.C. 552a(e)(1), (2) and (3), 5 U.S.C. 552a(e)(4)(G), (H), and (I), 5 U.S.C. 552a(e)(5) and (8), 5 U.S.C. 552a(f), and 5 U.S.C. 552a(g).

(d) *Reasons for exemptions under 5 U.S.C. 552a(j)(2).* (1) 5 U.S.C. 552a(e)(4)(G) and (f)(l) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the systems of records would give individuals an opportunity to learn whether they have been identified as suspects or subjects of investigation. As further described in (d)(2) of this section, access to such knowledge would impair SIGAR's ability to carry out its mission, since individuals could:

(i) Take steps to avoid detection;

(ii) Inform associates that an investigation is in progress;

(iii) Learn the nature of the investigation;

(iv) Learn whether they are only suspects or identified as law violators;

(v) Begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or

(vi) Destroy evidence needed to prove the violation.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5) grant individuals access to records pertaining to them. The application of these provisions to the systems of records would compromise SIGAR's ability to provide useful tactical and strategic information to law enforcement agencies.

(i) Permitting access to records contained in the systems of records would provide individuals with information concerning the nature of any current investigations and would enable them to avoid detection or apprehension by:

(A) Discovering the facts that would form the basis for their arrest;

(B) Enabling them to destroy or alter evidence of criminal conduct that would form the basis for their arrest; and

(C) Using knowledge that criminal investigators had reason to believe that a crime was about to be committed, to delay the commission of the crime or commit it at a location that might not be under surveillance.

(ii) Permitting access to either on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning crimes to structure their operations so as to avoid detection or apprehension.

(iii) Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources and informers and the nature of the information supplied and thereby endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informers might refuse to provide criminal investigators with valuable information unless they believed that their identities would not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair SIGAR's ability to carry out its mandate.

(iv) Furthermore, providing access to records contained in the systems of records could reveal the identities of undercover law enforcement officers who compiled information regarding the individual's criminal activities and thereby endanger the physical safety of those undercover officers or their families by exposing them to possible reprisals.

(v) By compromising the law enforcement value of the systems of records for the reasons outlined in paragraphs (d)(2)(i) through (iv) of this section, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with SIGAR and thus would restrict SIGAR's access to information necessary to accomplish its mission most effectively.

(vi) Limitation on access to the material contained in the protective intelligence files is considered necessary to the preservation of the utility of intelligence files and in safeguarding those persons SIGAR is authorized to protect. Access to the protective intelligence files could adversely affect the quality of information available to SIGAR; compromise confidential sources, hinder the ability of SIGAR to keep track of persons of protective interest; and interfere with SIGAR's protective intelligence activities by individuals gaining access to protective intelligence files.

(vii) Many of the persons on whom records are maintained in the protective intelligence suffer from mental aberrations. Knowledge of their condition and progress comes from authorities, family members and witnesses. Many times this information comes to SIGAR as a result of two party conversations where it would be impossible to hide the identity of informants. Sources of information must be developed, questions asked and

answers recorded. Trust must be extended and guarantees of confidentiality and anonymity must be maintained. Allowing access to information of this kind to individuals who are the subjects of protective interest may well lead to violence directed against an informant by a mentally disturbed individual.

(viii) Finally, the dissemination of certain information that SIGAR may maintain in the systems of records is restricted by law.

(3) 5 U.S.C. 552a(d)(2), (3) and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to him or her and require the agency either to amend the record, or to note the disputed portion of the record and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual's having access to his or her records, and since these rules exempt the systems of records from the provisions of 5 U.S.C. 552a relating to access to records, for the reasons set out in paragraph (d)(2) of this section, these provisions should not apply to the systems of records.

(4) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

(i) The application of this provision would impair the ability of law enforcement agencies outside SIGAR to make effective use of information provided by SIGAR. Making accountings of disclosures available to the subjects of an investigation would alert them to the fact that another agency is conducting an investigation into their criminal activities and could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Violators possessing such knowledge would be able to take measures to avoid detection or apprehension by altering their operations, by transferring their criminal activities to other geographical areas, or by destroying or concealing evidence that would form the basis for arrest. In the case of a delinquent account, such release might enable the subject of the investigation to dissipate assets before levy.

(ii) Moreover, providing accountings to the subjects of investigations would alert them to the fact that SIGAR has information regarding their criminal activities and could inform them of the general nature of that information. Access to such information could reveal the operation of SIGAR's information-gathering and analysis systems and permit violators to take steps to avoid detection or apprehension.

(iii) The release of such information to the subject of a protective intelligence file would provide significant information concerning the nature of an investigation, and could result in impeding or compromising the efforts of Department personnel to detect persons suspected of criminal activities or to collect information necessary for the proper evaluation of persons considered to be of protective interest.

(5) 5 U.S.C. 552(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute that the agency made in accordance with 5 U.S.C. 552a(d) to any record that the agency disclosed to the person or agency if an accounting of the disclosure was made. Since this provision depends on an individual's having access to and an opportunity to request amendment of records pertaining to him or her, and since these rules exempt the systems of records from the provisions of 5 U.S.C. 552a relating to access to and amendment of records, for the reasons set out in paragraph (f)(3) of this section, this provision should not apply to the systems of records.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the systems of records could compromise SIGAR's ability to provide useful information to law enforcement agencies, since revealing sources for the information could:

(i) Disclose investigative techniques and procedures;

(ii) Result in threats or reprisals against informers by the subjects of investigations; and

(iii) Cause informers to refuse to give full information to criminal investigators for fear of having their identities as sources disclosed.

(7) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term ''maintain,'' as defined in 5 U.S.C. 552a(a)(3), includes ''collect'' and ''disseminate.'' The application of this provision to the systems of records could impair SIGAR's ability to collect and disseminate valuable law enforcement information.

(i) At the time that SIGAR collects information, it often lacks sufficient time to determine whether the information is relevant and necessary to accomplish a SIGAR purpose.

(ii) In many cases, especially in the early stages of investigation, it may be impossible to immediately determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon collation with information developed subsequently, prove particularly relevant to a law enforcement program.

(iii) Compliance with the records maintenance criteria listed in the foregoing provision would require the periodic up-dating of SIGAR's protective intelligence files to insure that the records maintained in the system remain timely and complete.

(iv) Not all violations of law discovered by SIGAR fall within the investigative jurisdiction of SIGAR. To promote effective law enforcement, SIGAR will have to disclose such violations to other law enforcement agencies, including State, local and foreign agencies, that have jurisdiction over the offenses to which the information relates. Otherwise, SIGAR might be placed in the position of having to ignore information relating to violations of law not within the jurisdiction of SIGAR when that information comes to SIGAR's attention during the collation and analysis of information in its records.

(8) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision to the systems of records would impair SIGAR's ability to collate, analyze, and disseminate investigative, intelligence, and enforcement information.

(i) Most information collected about an individual under criminal investigation is obtained from third parties, such as witnesses and informants. It is usually not feasible to rely upon the subject of the investigation as a source for information regarding his criminal activities.

(ii) An attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the

individual an opportunity to attempt to conceal his criminal activities so as to avoid apprehension.

(iii) In certain instances, the subject of a criminal investigation is not required to supply information to criminal investigators as a matter of legal duty.

(iv) During criminal investigations it is often a matter of sound investigative procedure to obtain information from a variety of sources to verify information already obtained.

(9) 5 U.S.C. 552a(e)(3) requires an agency to inform each individual whom it asks to supply information, on the form that it uses to collect the information or on a separate form that the individual can retain, of the agency's authority for soliciting the information; whether disclosure of information is voluntary or mandatory; the principal purposes for which the agency will use the information; the routine uses that may be made of the information; and the effects on the individual of not providing all or part of the information. The systems of records should be exempted from this provision to avoid impairing SIGAR's ability to collect and collate investigative, intelligence, and enforcement data.

(i) Confidential sources or undercover law enforcement officers often obtain information under circumstances in which it is necessary to keep the true purpose of their actions secret so as not to let the subject of the investigation or his or her associates know that a criminal investigation is in progress.

(ii) If it became known that the undercover officer was assisting in a criminal investigation, that officer's physical safety could be endangered through reprisal, and that officer may not be able to continue working on the investigation.

(iii) Individuals often feel inhibited in talking to a person representing a criminal law enforcement agency but are willing to talk to a confidential source or undercover officer whom they believe not to be involved in law enforcement activities.

(iv) Providing a confidential source of information with written evidence that he or she was a source, as required by this provision, could increase the likelihood that the source of information would be subject to retaliation by the subject of the investigation.

(v) Individuals may be contacted during preliminary information gathering, surveys, or compliance projects concerning the administration of the internal revenue laws before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision would impede or compromise subsequent investigations.

(vi) Finally, application of this provision could result in an unwarranted invasion of the personal privacy of the subject of the criminal investigation, particularly where further investigation reveals that the subject was not involved in any criminal activity.

(10) 5 U.S.C. 552a(e)(5) requires an agency to maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

(i) Since 5 U.S.C. 552a(a)(3) defines ''maintain'' to include ''collect'' and ''disseminate,'' application of this provision to the systems of records would hinder the initial collection of any information that could not, at the moment of collection, be determined to be accurate, relevant, timely, and complete. Similarly, application of this provision would seriously restrict SIGAR's ability to disseminate information pertaining to a possible violation of law to law enforcement and regulatory agencies. In collecting information during a criminal investigation, it is often impossible or unfeasible to determine accuracy, relevance, timeliness, or completeness prior to collection of the information. In disseminating information to law enforcement and regulatory agencies, it is often impossible to determine accuracy, relevance, timeliness, or completeness prior to dissemination, because SIGAR may not have the expertise with which to make such determinations.

(ii) Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collated and analyzed with other available information, become more pertinent as an investigation progresses. In addition, application of this provision could seriously impede criminal investigators and intelligence analysts in the exercise of their judgment in reporting results obtained during criminal investigations.

(iii) Compliance with the records maintenance criteria listed in the foregoing provision would require the periodic up-dating of SIGAR's protective intelligence files to insure that the records maintained in the system remain timely and complete.

(11) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when the agency makes any record on the individual available to any person under compulsory legal process, when such process becomes a matter of public record. The systems of records should be exempted from this provision to avoid revealing investigative techniques and procedures outlined in those records and to prevent revelation of the existence of an ongoing investigation where there is need to keep the existence of the investigation secret.

(12) 5 U.S.C. 552a(g) provides for civil remedies to an individual when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when an agency fails to maintain accurate, relevant, timely, and complete records which are used to make a determination adverse to the individual, and when an agency fails to comply with any other provision of 5 U.S.C. 552a so as to adversely affect the individual. The systems of records should be exempted from this provision to the extent that the civil remedies may relate to provisions of 5 U.S.C. 552a from which these rules exempt the systems of records, since there should be no civil remedies for failure to comply with provisions from which SIGAR is exempted. Exemption from this provision will also protect SIGAR from baseless civil court actions that might hamper its ability to collate, analyze, and disseminate investigative, intelligence, and law enforcement data.

(e) *Specific exemptions under 5 U.S.C. 552a(k)(1).* (1) Under 5 U.S.C. 552a(k)(1), the head of any agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act to the extent that the system contains information subject to the provisions of 5 U.S.C. 552(b)(1). This paragraph applies to the following systems of records maintained by SIGAR:

SIGAR–07 Hotline Records;
SIGAR–08 Investigation Records;
SIGAR–09 Legal Records.

(2) SIGAR hereby exempts the systems of records listed in paragraph (e)(1) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(1): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), and (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(f) *Reasons for exemptions under 5 U.S.C. 552a(k)(1).* The reason for invoking the exemption is to protect material authorized to be kept secret in the interest of national defense or foreign policy pursuant to Executive Orders 12958, 13526, or successor or prior Executive Orders.

(g) *Specific exemptions under 5 U.S.C. 552a(k)(2).* (1) Under 5 U.S.C. 552a(k)(2), the head of any agency may

promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the system is investigatory material compiled for law enforcement purposes and for the purposes of assuring the safety of individuals protected by SIGAR pursuant to the provisions of 18 U.S.C. 3056. This paragraph applies to the following systems of records maintained by SIGAR:

SIGAR–04 Freedom of Information Act and Privacy Act Records;
SIGAR–05 Audit Records;
SIGAR–06 Correspondence Records;
SIGAR–07 Hotline Records;
SIGAR–08 Investigation Records;
SIGAR–09 Legal Records;
SIGAR–10 Legislative Inquiries and Correspondence.

(2) SIGAR hereby exempts the systems of records listed in paragraphs (g)(1)(i) of this section from the following provisions of 5 U.S.C. 552a, pursuant to 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3), 5 U.S.C. 552a(d)(1), (2), (3), (4), 5 U.S.C. 552a(e)(1), 5 U.S.C. 552a(e)(4)(G), (H), and (I), and 5 U.S.C. 552a(f).

(h) *Reasons for exemptions under 5 U.S.C. 552a(k)(2).* (1) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

(i) The application of this provision would impair the ability of SIGAR and of law enforcement agencies outside SIGAR to make effective use of information maintained by SIGAR. Making accountings of disclosures available to the subjects of an investigation would alert them to the fact that an agency is conducting an investigation into their illegal activities and could reveal the geographic location of the investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Violators possessing such knowledge would be able to take measures to avoid detection or apprehension by altering their operations, by transferring their illegal activities to other geographical areas, or by destroying or concealing evidence that would form the basis for detection or apprehension. In the case of a delinquent account, such release might enable the subject of the investigation to dissipate assets before levy.

(ii) Providing accountings to the subjects of investigations would alert them to the fact that SIGAR has information regarding their illegal activities and could inform them of the general nature of that information.

(2) 5 U.S.C. 552a(d)(1), (e)(4)(H) and (f)(2), (3) and (5) grant individuals access to records pertaining to them. The application of these provisions to the systems of records would compromise SIGAR's ability to utilize and provide useful tactical and strategic information to law enforcement agencies.

(i) Permitting access to records contained in the systems of records would provide individuals with information concerning the nature of any current investigations and would enable them to avoid detection or apprehension by:

(A) Discovering the facts that would form the basis for their detection or apprehension;

(B) Enabling them to destroy or alter evidence of illegal conduct that would form the basis for their detection or apprehension, and

(C) Using knowledge that investigators had reason to believe that a violation of law was about to be committed, to delay the commission of the violation or commit it at a location that might not be under surveillance.

(ii) Permitting access to either on-going or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning non-criminal acts to structure their operations so as to avoid detection or apprehension.

(iii) Permitting access to investigative files and records could, moreover, disclose the identity of confidential sources and informers and the nature of the information supplied and thereby endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informers might refuse to provide investigators with valuable information unless they believed that their identities would not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair SIGAR's ability to carry out its mandate.

(iv) Furthermore, providing access to records contained in the systems of records could reveal the identities of undercover law enforcement officers or other persons who compiled information regarding the individual's illegal activities and thereby endanger the physical safety of those undercover officers, persons, or their families by exposing them to possible reprisals.

(v) By compromising the law enforcement value of the systems of records for the reasons outlined in paragraphs (h)(2)(i) through (iv) of this section, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with SIGAR and thus would restrict SIGAR's access to information necessary to accomplish its mission most effectively.

(vi) Finally, the dissemination of certain information that SIGAR may maintain in the systems of records is restricted by law.

(3) 5 U.S.C. 552a(d)(2), (3) and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to him or her and require the agency either to amend the record, or to note the disputed portion of the record and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual's having access to his or her records, and since these rules exempt the systems of records from the provisions of 5 U.S.C. 552a relating to access to records, for the reasons set out in paragraph (h)(2) of this section, these provisions should not apply to the systems of records.

(4) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term ''maintain,'' as defined in 5 U.S.C. 552a(a)(3), includes ''collect'' and ''disseminate.'' The application of this provision to the system of records could impair SIGAR's ability to collect, utilize and disseminate valuable law enforcement information.

(i) At the time that SIGAR collects information, it often lacks sufficient time to determine whether the information is relevant and necessary to accomplish a Department purpose.

(ii) In many cases, especially in the early stages of investigation, it may be impossible immediately to determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon collation with information developed subsequently, prove particularly relevant to a law enforcement program.

(iii) Not all violations of law discovered by SIGAR analysts fall within the investigative jurisdiction of

SIGAR. To promote effective law enforcement, SIGAR will have to disclose such violations to other law enforcement agencies, including State, local and foreign agencies that have jurisdiction over the offenses to which the information relates. Otherwise, SIGAR might be placed in the position of having to ignore information relating to violations of law not within the jurisdiction of SIGAR when that information comes to SIGAR's attention during the collation and analysis of information in its records.

(5) 5 U.S.C. 552a (e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the systems of records would allow individuals to learn whether they have been identified as suspects or subjects of investigation. As further described in the following paragraph, access to such knowledge would impair SIGAR's ability to carry out its mission, since individuals could:

(i) Take steps to avoid detection;

(ii) Inform associates that an investigation is in progress;

(iii) Learn the nature of the investigation;

(iv) Learn whether they are only suspects or identified as law violators;

(v) Begin, continue, or resume illegal conduct upon learning that they are not identified in the system of records; or (vi) Destroy evidence needed to prove the violation.

(6) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the systems of records could compromise SIGAR's ability to complete or continue investigations or to provide useful information to law enforcement agencies, since revealing sources for the information could:

(i) Disclose investigative techniques and procedures;

(ii) Result in threats or reprisals against informers by the subjects of investigations; and

(iii) Cause informers to refuse to give full information to investigators for fear of having their identities as sources disclosed.

[FR Doc. 2012–15429 Filed 6–26–12; 8:45 am]

BILLING CODE 3710–L9–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0672; Directorate Identifier 2011–NM–261–AD]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aerosystems Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Saab AB, Saab Aerosystems Model 340A (SAAB/SF340A) and SAAB 340B airplanes. This proposed AD was prompted by reports of stall events during icing conditions which were not accompanied with a prior stall warning. This proposed AD would require replacing the stall warning computer (SWC) with a new SWC, and modifying the airplane for the replacement of the SWC. We are proposing this AD to prevent natural stall events when operating in icing conditions, which if not corrected may result in loss of control of the airplane.

DATES: We must receive comments on this proposed AD by August 13, 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Saab AB, Saab Aerosystems, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email *saab2000.techsupport@saabgroup.com;* Internet *http://www.saabgroup.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office 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 Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149.

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–2012–0672; Directorate Identifier 2011–NM–261–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 based on 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

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0219, dated November 11, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> A few natural stall events, specifically when operating in icing conditions, have been experienced on SAAB 340 series aeroplanes, without receiving a prior stall warning. This condition, if not corrected, could result in loss of control of the aeroplane.
>
> To address this potential unsafe condition, a modified stall warning system, incorporating improved stall warning logic, has been developed.

SAAB have issued Service Bulletin (SB) 340–27–098 and SB 340–27–099, which include instructions to replace the present Stall Warning Computer (SWC) with a new SWC, and instructions to activate the new SWC. The new system includes stall warning curves optimized for operation in icing conditions, which are activated by selection of Engine Anti-Ice.

For the reasons described above, this [EASA] AD requires the replacement of the SWC, by installing new SWC Part Number (P/N) 0020AK6 on aeroplanes with basic wing tip, and installing a new SWC P/N 0020AK7 on aeroplanes with extended wing tip, as applicable to aeroplane configuration.

Required actions also include modifying the airplane for the replacement of the SWC. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Saab has issued the following service bulletins:

- SAAB Service Bulletin 340–27–097, Revision 03, dated April 19, 2012.
- SAAB Service Bulletin 340–27–098, Revision 01, dated April 13, 2012.
- SAAB Service Bulletin 340–27–099, Revision 01, dated April 13, 2012.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

EASA AD 2011–0219, dated November 11, 2011, prohibits installation of certain part numbers following the accomplishment of the replacement required by paragraph (g) of this AD. This AD prohibits installation of those part numbers as of the effective date of this AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 162 products of U.S. registry. We also estimate that it would take about 78 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $33,000 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $6,420,060, or $39,630 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 this proposed regulation:

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

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

List of Subjects in 14 CFR Part 39

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

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 adding the following new AD:

Saab AB, Saab Aerosystems: Docket No. FAA–2012–0672; Directorate Identifier 2011–NM–261–AD.

(a) Comments Due Date

We must receive comments by August 13, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Saab AB, Saab Aerosystems Model 340A (SAAB/SF340A) and SAAB 340B airplanes, certificated in any category, as identified in paragraphs (c)(1) and (c)(2) of this AD, except airplanes that have SAAB modification number 2650 and/or 2859 installed.

(1) Model 340A (SAAB/SF340A) airplanes serial numbers 004 through 159 inclusive.

(2) Model SAAB 340B airplanes, serial numbers 160 through 459 inclusive.

Note 1 to paragraph (c) of this AD: This AD does not apply to airplanes with serial number 170, 342, 362, 363, 367, 372, 379, 385, 395, 405, 409, 431, and 455.

(d) Subject

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

(e) Reason

This AD was prompted by reports of stall events during icing conditions which were not accompanied with a prior stall warning. We are issuing this AD to prevent natural stall events when operating in icing conditions, which if not corrected may result in loss of control of the airplane.

(f) Compliance

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

(g) Replacement

(1) For airplanes with basic wing tip: Within 24 months after the effective date of

this AD, replace all stall warning computers (SWCs) having part number (P/N) 0020AK, 0020AK1, 0020AK2, or 0020AK4, with a new SWC P/N 0020AK6, in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–27–098, Revision 01, dated April 13, 2012.

(2) For airplanes with extended wing tip: Within 24 months after the effective date of this AD, replace the SWC P/N 0020AK3 MOD 1 with a new SWC P/N 0020AK7, in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–27–099, Revision 01, dated April 13, 2012.

(h) Concurrent Modification

Before or concurrently with the accomplishment of the requirements of paragraph (g) of this AD: Modify the airplane in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–27–097, Revision 03, dated April 19, 2012.

(i) Parts Installation

As of the effective date of this AD, do not install any SWC having P/N 0020AK, 0020AK1, 0020AK2, 0020AK4, or 0020AK3 MOD 1 on any airplane.

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using SAAB Service Bulletin 340–27–097, dated September 1, 2011; or SAAB Service Bulletin 340–27–097, Revision 01, dated September 26, 2011; or SAAB Service Bulletin 340–27–097, Revision 02, dated October 7, 2011.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, ANM–116, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(l) Related Information

Refer to MCAI EASA Airworthiness Directive 2011–0219, dated November 11, 2011, and the service information specified in paragraphs (l)(1) through (l)(3) of this AD, for related information.

(1) SAAB Service Bulletin 340–27–097, Revision 03, dated April 19, 2012.

(2) SAAB Service Bulletin 340–27–098, Revision 01, dated April 13, 2012.

(3) SAAB Service Bulletin 340–27–099, Revision 01, dated April 13, 2012.

Issued in Renton, Washington, on June 21, 2012.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–15690 Filed 6–26–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0538; Airspace Docket No. 12–ANM–8]

Proposed Amendment of Class E Airspace; Lewistown, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Lewistown Municipal Airport, Lewistown, MT. Controlled airspace is necessary to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Lewistown Municipal Airport, Lewistown, MT. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before August 13, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0538; Airspace Docket No. 12–ANM–8, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2012–0538 and Airspace Docket No. 12–ANM–8) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0538 and Airspace Docket No. 12–ANM–8''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and

5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E surface airspace and Class E airspace extending upward from 700 feet above the surface at Lewistown Municipal Airport, Lewistown, MT. Controlled airspace is necessary to accommodate aircraft using RNAV (GPS) standard instrument approach procedures at Lewistown Municipal Airport and would enhance the safety and management of aircraft operations at the airport.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed 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 this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for 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 would modify controlled airspace at Lewistown Municipal Airport, Lewistown, MT.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM MT E2 Lewistown, MT [Modified]

Lewistown Municipal Airport, MT
(Lat. 47°02′57″ N., long. 109°28′00″ W.)

Within a 6.8-mile radius of the Lewistown Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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

* * * * *

ANM MT E5 Lewistown, MT [Modified]

Lewistown Municipal Airport
(Lat. 47°02′57″ N., long. 109°28′00″ W.)

That airspace extending upward from 700 feet above the surface within 9.3-mile radius of the Lewistown Municipal Airport, and within 4.5 miles each side of the Lewistown Municipal Airport 269° bearing extending from the 9.3-mile radius to 14.5 miles west of the airport, and within 2.5 miles south and 4 miles north of the Lewistown Municipal Airport 258° bearing extending from the 9.3-mile radius to 20.5 miles west of the airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 47°21′00″ N., long. 110°33′00″ W.; to lat. 47°30′00″ N., long. 110°00′00″ W.; to lat. 47°16′00″ N., long. 109°44′00″ W.; to lat. 47°11′33″ N., long. 108°46′00″ W.; to lat. 46°43′40″ N., long. 108°48′22″ W.; to lat. 46°43′40″ N., long. 109°32′14″ W., to lat. 46°32′19″ N., long. 109°32′14″ W.; to lat. 46°32′19″ N., long. 110°06′30″ W.; thence to the point of origin.

Issued in Seattle, Washington, on June 18, 2012.

Vered Lovett,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–15748 Filed 6–26–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0519; Airspace Docket No. 12–ANM–16]

Proposed Amendment of Class D and Class E Airspace; Bozeman, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class D and Class E airspace at Bozeman Yellowstone International Airport, Bozeman, MT. This action would align two Class E airspace areas with the Class D airspace area. This action would also update the airport name to Bozeman Yellowstone International Airport. This action would enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before August 13, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0519; Airspace

Docket No. 12–ANM–16, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2012–0519 and Airspace Docket No. 12–ANM–16) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0519 and Airspace Docket No. 12–ANM–16''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E surface airspace, and Class E airspace designated as an extension to Class D, at Bozeman Yellowstone International Airport, Bozeman, MT, adjusting the radii to be in alignment with the Class D airspace area. This action would also update the airport name from Bozeman, Gallatin Field Airport to Bozeman Yellowstone International Airport for existing Class D and E airspace areas.

Class D and Class E airspace designations are published in paragraphs 5000, 6002, 6004, 6005 and 6006, respectively, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed 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 this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Bozeman Yellowstone International Airport, Bozeman, MT.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D airspace.

* * * * *

ANM MT D Bozeman, MT [Modified]

Bozeman Yellowstone International Airport, MT

(Lat. 45°46′39″ N., long. 111°09′07″ W.)

That airspace extending upward from the surface to and including 7,000 feet MSL within a 5.4-mile radius of Bozeman

Yellowstone International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM MT E2 Bozeman, MT [Modified]

Bozeman Yellowstone International Airport, MT
(Lat. 45°46′39″ N., long. 111°09′07″ W.)

Within a 5.4-mile radius of Bozeman Yellowstone International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6004 Class E airspace designated as an extension to a Class D surface area.

* * * * *

ANM MT E4 Bozeman, MT [Modified]

Bozeman Yellowstone International Airport, MT
(Lat. 45°46′39″ N., long. 111°09′07″ W.)

That airspace extending upward from the surface within 3 miles each side of the 316° bearing of Bozeman Yellowstone International Airport extending from the 5.4-mile radius of the airport to 15.5 miles northwest of the airport, and that airspace 2.4 miles each side of the 212° bearing of the Bozeman Yellowstone International Airport extending from the 5.4-mile radius of the airport to 7 miles southwest of the airport.

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

* * * * *

ANM MT E5 Bozeman, MT [Modified]

Bozeman Yellowstone International Airport, MT
(Lat. 45°46′39″ N., long. 111°09′07″ W.)

That airspace extending upward from 700 feet above the surface within a 13.5-mile radius of Bozeman Yellowstone International Airport, and within 8 miles northeast and 13 miles southwest of the 316° bearing of the airport extending from the 13.5-mile radius to 24.4 miles northwest of the airport.

Paragraph 6006 En route domestic airspace areas.

* * * * *

ANM MT E6 Bozeman, MT [Modified]

Bozeman Yellowstone International Airport, MT
(Lat. 45°46′39″ N., long. 111°09′07″ W.)

That airspace extending upward from 1,200 feet above the surface within a 50-mile radius of the Bozeman Yellowstone International Airport; excluding existing lateral limits of controlled airspace 12,000 feet MSL and above.

Issued in Seattle, Washington, on June 19, 2012.

Robert Henry,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–15698 Filed 6–26–12; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 43

RIN 3038–AD84

Rules Prohibiting the Aggregation of Orders To Satisfy Minimum Block Sizes or Cap Size Requirements, and Establishing Eligibility Requirements for Parties to Block Trades

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is issuing a notice of proposed rulemaking to add certain provisions to part 43 of the Commission's regulations pertaining to block trades in swap contracts. The provisions would: (i) Prohibit the aggregation of orders for different trading accounts in order to satisfy the minimum block size or cap size requirements, except for orders aggregated by certain commodity trading advisors (''CTAs''), investment advisers and foreign persons (as described in this release), if such person has more than $25,000,000 in total assets under management (''AUM''); (ii) provide that parties to a block trade must individually qualify as eligible contract participants (''ECPs''), except where a designated contract market allows certain CTAs, investment advisers and foreign persons (as described in this release), to transact block trades for customers who are not ECPs, if such CTA, investment adviser or foreign person has more than $25,000,000 in total AUM; and (iii) require that persons transacting block trades on behalf of customers must receive prior written instruction or consent from the customer to do so.

DATES: Comments must be received on or before July 27, 2012.

ADDRESSES: You may submit comments, identified by RIN number [TBD], by any of the following methods:

- *The agency's Web site:* at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- Mail: David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

Commenters to this notice of proposed rulemaking are requested to refrain from providing comments with respect to the provisions in part 43 of the Commission's regulations that are beyond the scope of this notice of proposed rulemaking. The Commission only plans to address those comments that are responsive to the policies, merits and substance of the proposed provisions set forth in this notice of proposed rulemaking.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Nancy Markowitz, Deputy Director, Division of Market Oversight, 202–418–5453, *nmarkowitz@cftc.gov;* Nadia Zakir, Special Counsel, Division of Market Oversight, 202–418–5720, *nzakir@cftc.gov;* Laurie Gussow, Attorney-Advisor, 202–418–7623, *lgussow@cftc.gov;* George Pullen, Economist, Division of Market Oversight, 202–418–6709, *gpullen@cftc.gov;* Esen Onur, Economist, Office of the Chief Economist, 202–418–6146, *eonur@cftc.gov;* or Herminio Castro,

[1] *See* 17 CFR 145.9.

Counsel, Office of General Counsel, 202–418–6705, *hcastro@cftc.gov,* Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Dodd-Frank Act

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').[2] Title VII of the Dodd-Frank Act [3] amended the Commodity Exchange Act (''CEA'' or ''Act'') [4] to establish a comprehensive, new regulatory framework for swaps and security-based swaps. This legislation was enacted to reduce risk, increase transparency and promote market integrity within the financial system by, inter alia: (1) Providing for the registration and comprehensive regulation of swap dealers (''SDs'') and major swap participants (''MSPs''); (2) imposing mandatory clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

Section 727 of the Dodd-Frank Act enacted section 2(a)(13) of the CEA, which authorizes and requires the Commission to promulgate regulations for the real-time public reporting of swap transaction and pricing data.[5] Among other things, sections 2(a)(13)(E)(ii) and (iii) of the CEA respectively require the Commission to prescribe regulations specifying ''the criteria for determining what constitutes a large notional swap transaction (block trade) for particular markets and contracts'' and ''the appropriate time delay for reporting large notional swap transactions (block trades) to the public.'' [6]

B. The Initial Proposal

In order to implement the various statutory requirements imposed under section 2(a)(13) of the CEA, the Commission published an initial notice of proposed rulemaking on December 7, 2010 (the ''Initial Proposal'').[7] As relevant to this notice of proposed rulemaking, the Initial Proposal proposed: (1) Definitions for the terms ''large notional off-facility swap'' and ''block trade''; [8] (2) a method for determining the appropriate minimum block sizes for large notional off-facility swaps and block trades; [9] and (3) a framework for timely reporting of such transactions and trades.[10]

Among other requirements contained in the Initial Proposal, proposed § 43.5(b)(1) provided that eligible parties to a block trade (or large notional swap) must be ECPs,[11] except that a designated contract market (''DCM'') may allow a CTA acting in an asset managerial capacity and registered pursuant to Section 4n of the Act, or a principal thereof, including any investment adviser who satisfies the criteria of § 4.7(a)(2)(v), or a foreign person performing a similar role or function and subject as such to foreign regulation, to transact block trades for customers who are not eligible contract participants (''non-ECPS''), if such CTA, investment adviser or foreign person has more than $25,000,000 in total AUM. The proposed rule further required that a person transacting a block trade on behalf of a customer must receive written instruction or prior consent from the customer to do so.

Furthermore, proposed § 43.5(m) of the Initial Proposal prohibited the aggregation of orders for different trading accounts in order to satisfy the minimum block size requirement, except if done on a DCM by a CTA acting in an asset managerial capacity and registered pursuant to Section 4n of the Act, or a principal thereof, including any investment adviser who satisfies the criteria of § 4.7(a)(2)(v), or a foreign person performing a similar role or function and subject as such to foreign regulation, if such CTA, investment adviser or foreign person has more than $25,000,000 in total AUM.

The Commission issued the Initial Proposal for public comment for a period of 60 days, but later reopened the comment period for an additional 45 days.[12]

1. Comments in Response to the Initial Proposal

The Commission received four comment letters in response to the proposed aggregation rule. The American Benefits Council and the Committee on the Investment of Employee Benefit Assets stated that qualified investment advisers who are not CTAs should be able to aggregate block trade orders for different trading accounts.[13] Tradeweb commented that the CTAs that trade on SEFs should also be permitted to aggregate trades of behalf of their customers for purposes of block trades.[14] J.P. Morgan commented that the proposed rule appears to reflect a concern that private negotiation offers less protection to unsophisticated

[2] *See* Public Law 111–203, 124 Stat. 1376 (2010).

[3] The short title of Title VII of the Dodd-Frank Act is the ''Wall Street Transparency and Accountability Act of 2010.''

[4] *See* 7 U.S.C. 1 *et seq.*

[5] *See generally* CEA section 2(a)(13), 7 U.S.C. 2(a)(13).

[6] *See* CEA sections 2(a)(13)(E)(ii) and (iii).

[7] *See* Real-Time Public Reporting of Swap Transaction Data, 75 FR 76,139 (Dec. 7, 2010), as corrected in Real-Time Public Reporting of Swap Transaction Data Correction, 75 FR 76,930 (Dec. 10, 2010) (''Initial Proposal'').

[8] The Initial Proposal defined the term ''large notional swap''. *See* proposed § 43.2(l), 75 FR 76,171. The Adopting Release finalized the term as ''large notional off-facility swap'', to denote, in relevant part, that the swap is not executed pursuant to SEF or DCM rules and procedures. *See* § 43.2, 77 FR 1182, 1244 (Jan. 9, 2012) (''Adopting Release''). Specifically, the Adopting Release defined the term as an ''off-facility swap that has a notional or principal amount at or above the appropriate minimum block size applicable to such publicly reportable swap transaction and is not a block trade as defined in § 43.2 of the Commission's regulations.'' *Id.*

The final definition of ''block trade'' in the Adopting Release is similar to how that term was defined in the Initial Proposal. *See* proposed § 43.2(f), 75 FR 76,171. The Adopting Release defines the term ''block trade'' as a publicly reportable swap transaction that: ''(1) [i]nvolves a swap that is listed on a [SEF or DCM]; (2) [o]ccurs away from the [SEF's or DCM's] trading system or platform and is executed pursuant to the [SEF's or DCM's] rules and procedures; (3) has a notional or principal amount at or above the appropriate minimum block size applicable to such swap; and (4) [i]s reported subject to the rules and procedures of the [SEF or DCM] and the rules described in [part 43], including the appropriate time delay requirements set forth in § 43.5.'' *See* § 43.2, 77 FR 1,243.

[9] *See* proposed § 43.5, 75 FR 76174–76.

[10] Proposed § 43.5(k)(1) in the Initial Proposal provided that the time delay for the public dissemination of data for a block trade or large notional off-facility swap shall commence at the time of execution of such trade or swap. *See* 75 FR 76,176. Proposed § 43.5(k)(2) provided that the time delay for standardized block trades and large notional off-facility swaps (*i.e.,* swaps that fall under CEA Section 2(a)(13)(C)(i) and (iv)) would be 15 minutes from the time of execution. *Id.* The Initial Proposal did not provide specific time delays for large notional off-facility swaps (*i.e.,* swaps that fall under Section 2(a)(13)(C)(ii) and (iii)). Instead, proposed § 43.5(k)(3) provided that such swaps shall be reported subject to a time delay that may be prescribed by the Commission. *Id.*

The Adopting Release established time delays for the public dissemination of block trades and large notional off-facility swaps in § 43.5. *See* 77 FR 1247–49.

[11] *See* CEA Section 1a(18).

[12] The initial comment period for the Initial Proposal closed on February 7, 2011. The comment periods for most proposed rulemakings implementing the Dodd-Frank Act—including the proposed part 43 rules—subsequently were reopened for the period of April 27 through June 2, 2011.

[13] The American Benefits Council and the Committee on the Investment of Employee Benefit Assets comment letter at 3 (Feb. 7, 2011). The comment letter specifically requested that the rule be revised such that the words ''including any'' from the second sentence are deleted and replaced with the word ''an.''

[14] Tradeweb comment letter at 5 (Feb. 7, 2011).

investors than trading through the central market, and that since all entities that transact in the OTC market already must be ECPs, the analogous concern about customer protection in the swaps market is already addressed.[15] In related comments, the Wholesale Market Brokers Association (Americas) (''WMBA'') commented that ''work-up'' or ''join-the-trade'' periods be permitted and recognized to satisfy the block trade requirement.[16]

C. The Adopting Release and Further Proposal

On January 9, 2012, the Commission issued a notice of final rulemaking[17] (''Adopting Release'') that finalized several provisions that were proposed in the Initial Proposal pertaining to, among other things, the reporting, public dissemination and recordkeeping requirements applicable to certain swap transactions.[18]

Based on the public comments received in response to the Initial Proposal, in the Adopting Release the Commission agreed that additional analysis was necessary prior to issuance of final rules for appropriate minimum block sizes, and accordingly determined not to make final its proposed § 43.5 rules specifying the criteria for determining block trade sizes. Instead, the Commission intended to issue a separate notice of proposed rulemaking that would specifically address the appropriate criteria for determining appropriate minimum block trade sizes in light of data and comments received.[19] On March 15, 2012, the Commission decided to further propose (''Further Proposal'') certain other block trade provisions that were included with the Initial Proposal.[20]

After it issued the Further Proposal, the Commission determined that the aggregation provision and the provision that specified the eligible parties to a block trade, including the proposed requirement that persons transacting block trades on behalf of customers must receive prior written instruction or consent from the customer to do so, were inadvertently omitted from the Further Proposal. These provisions are the subject of this notice of proposed rulemaking.

II. Notice of Proposed Rulemaking

A. Proposed § 43.6(h)(6)—Aggregation

Proposed § 43.6(h)(6) would prohibit the aggregation of orders for different trading accounts in order to satisfy the minimum block size or cap size requirements, except that aggregation is permissible if done on a DCM or SEF by a person who: (i)(A) is a CTA registered pursuant to Section 4n of the Act or exempt from such registration under the Act, or a principal thereof, and who has discretionary trading authority or directs client accounts, (B) is an investment adviser who has discretionary trading authority or directs client accounts and satisfies the criteria of § 4.7(a)(2)(v) of this chapter, or (C) is a foreign person who performs a similar role or function as the persons described in (A) or (B) and is subject as such to foreign regulation, and (ii) has more than $25,000,000 in total AUM.

The prohibition of aggregation of orders for different trading accounts in order to meet the minimum block size or cap size requirements is an integral element in ensuring the integrity of block trading principles, and in preserving the basis for the anonymity associated with cap sizes. As defined in the Adopting Release, a block trade is a publicly reportable transaction that: (1) Involves a swap that is listed on a registered SEF or DCM; (2) occurs away from the registered SEF's or DCM's trading system or platform (and is executed pursuant to the rules of such SEF or DCM); (3) has a notional or principal amount at or above the appropriate minimum block size applicable to such swap; and (4) is reported subject to the rules and procedures of the SEF or DCM and Commission regulations, including the appropriate time delay requirements.[21] While block transactions are conducted pursuant to the rules of a SEF or DCM, by definition these transactions occur away from the SEF's or DCM's trading system or platform, where there is no pre-trade transparency. If too many trades were permitted to be aggregated and thus executable as blocks, the CEA objectives of increased transparency and price discovery for swaps trading could be undermined.[22] By prohibiting aggregation of orders for different accounts to meet the minimum block size requirement, the proposed rule would protect the principles of block trading, and would help to prevent potential circumvention of exchange-trading and of the real-time reporting obligations associated with non-block transactions. By presumption, the aggregation of orders for different accounts to meet the minimum block size threshold would be prohibited.

Indeed, in the futures market, all block trade rules approved by the Commission have included an aggregation prohibition (with the discrete exception of block trades done through certain CTAs). Accordingly, in the futures market, where market participants have engaged in block transactions for years, DCMs that permit block trading have rules that prohibit the aggregation of orders for different trading accounts to meet the minimum block size requirement.[23]

As proposed in this release, the rule also would prohibit aggregation in order to meet the cap size requirements. A cap size is defined in the Further Proposal as the maximum notional or principal amount of a publicly reportable swap transaction that is publicly disseminated.[24] A transaction that meets the cap size requirement would be eligible to mask the total size of the transaction if it equals or exceeds the cap size for a given swap category.[25] The Commission adopted cap sizes in order to help to protect the anonymity of counterparties' market positions and business transactions, and to mitigate the potential impact that real-time public reporting of extraordinarily large positions could have in reducing market

[15] J.P. Morgan comment letter at 9, n. 13 (Jan. 12, 2011).

[16] WMBA comment letter at 4–5 (Feb. 7, 2011) (commenting that ''the public dissemination of incremental activity that would otherwise constitute a block trade could jeopardize identification of counterparties and materially reduce market liquidity.'')

[17] Real-Time Public Reporting of Swap Transaction Data, 77 FR 1,182 (Jan. 9, 2012).

[18] Commenters are directed to the Adopting Release for a discussion of the issues addressed therein. *See id.*

[19] *See id.* at 1,185.

[20] Commenters are directed to the Further Proposal for a discussion of the issues addressed therein. *See* ''Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades,'' 77 FR 15,460 (Mar. 15, 2012). The comment period for the Further Proposal ended on May 14, 2012.

[21] *See* 77 FR 1,243.

[22] J.P. Morgan Comment letter at 5 (Jan. 12, 2011).

[23] The following DCMs have rules permitting block trading: Cantor Futures Exchange, L.P. (rule IV–16); CBOE Futures Exchange LLC (rule 415); Chicago Board of Trade (rule 526); CME (rule 526); ELX Futures, L.P. (rule IV–16); Eris Exchange, LLC (rule 601); Green Exchange, LLC (rule 602); ICE Futures (rule 4.31); Nasdaq OMX Futures Exchange, Inc. (rule E23); New York Mercantile Exchange, Inc. (rule 526); NYSE Liffe US, LLC (rule 423); and OneChicago LLC Futures Exchange (rule 417). Each of the aforementioned DCMs also have rules prohibiting aggregation of orders to meet minimum block transaction size: Cantor Futures Exchange, L.P. (rule IV–16(K)); CBOE Futures Exchange LLC (rule 415(a)(i)); Chicago Board of Trade (rule 526A); CME (rule 526A); ELX Futures, L.P. (rule IV–16(a)); Eris Exchange, LLC (rule 601(b)(1)); Green Exchange, LLC (rule 602(a)); ICE Futures (rule 4.31(a)(ii)(B)); Nasdaq OMX Futures Exchange, Inc. (rule E23(d)); New York Mercantile Exchange, Inc. (rule 526A); NYSE Liffe US, LLC (rule 423(a)(1)); and OneChicago LLC Futures Exchange (rule 418(a)(i)).

[24] 77 FR 15,516.

[25] 77 FR 15,489–90.

liquidity.[26] By preventing aggregation of orders to meet the cap size requirement, the proposed rule will help to ensure that cap sizes are used for the specific purpose for which they are intended (extraordinarily large positions), and will help to prevent potential circumvention of the real-time reporting obligations.

The proposed rule further provides that aggregation of orders for different trading accounts for purposes of the block size or cap size requirements may be permitted on a DCM or SEF if done by a person who: (i)(A) Is a CTA who is registered pursuant to Section 4n of the Act or is exempt from registration under the Act, or a principal thereof, and has discretionary trading authority or directs client accounts, (B) is an investment adviser who has discretionary trading authority or directs client accounts and satisfies the criteria of § 4.7(a)(2)(v) of the Commission's regulations, or (C) is a foreign person who performs a similar role or function to the persons described in (A) or (B) and is subject as such to foreign regulation, and (ii) has more than $25,000,000 in total AUM. As noted above, DCMs that permit block trading in connection with futures contracts currently prohibit aggregation of orders to meet the block size requirement, and a majority of these DCMs have substantially similar rules that allow aggregation in such context if done by certain CTAs, investment advisers and foreign persons.[27]

The Commission is seeking comments on whether this exception to the prohibition of aggregation of orders is appropriate in the context of the swaps market. The Commission seeks comments on whether such an exception should be available to other categories of Commission registrants, and if so, why? Additionally, the Commission seeks comments on whether the $25 million AUM requirement for the specified account controllers is appropriate in the context of block transactions for swaps? Further, the Commission seeks comments on whether the $25 million AUM requirement should include only swaps assets, or be based per asset class, or be different for the five asset classes of swaps? In addition to these specific questions, the Commission requests comments on all aspects of this notice of proposed rulemaking.

B. Proposed § 43.6(i)—Eligible Block Trade Parties

The Commission is also proposing under new § 43.6(i)(1) a provision that describes the eligible parties to a block trade. The proposed provision provides that parties to a block trade must be ''eligible contract participants,'' as that term is defined under Section 1a(18) of the CEA and the Commission's regulations. The proposed rule includes an exception to the ECP requirement by providing that a DCM may allow: (i) A CTA registered pursuant to Section 4n of the Act, or exempt from registration under the Act, or a principal thereof, who has discretionary trading authority or directs client accounts, (ii) an investment adviser who has discretionary trading authority or directs client accounts and satisfies the criteria of § 4.7(a)(2)(v) of the Commission's regulations, or (iii) a foreign person who performs a similar role or function to the persons described in (i) or (ii) and is subject as such to foreign regulation, to transact block trades for customers who are not ECPs, if such CTA, investment adviser or foreign person has more than $25,000,000 in total AUM.[28]

In the current futures market, all DCMs require that parties to block trades must be ECPs. A majority of these DCMs permit certain CTAs, investment advisers and foreign persons to transact a block trade on behalf of their non-ECP customers. The proposed rule, including the limited exception, is currently reflected in the rulebooks of numerous DCMs that permit block trading in the futures market.[29]

Proposed § 43.6(i)(2) further provides that a person transacting a block trade on behalf of a customer must receive prior written instruction or consent from the customer to do so. Such instruction or consent may be provided in a power of attorney or similar document by which the customer provides the person with discretionary trading authority or the authority to direct the trading in its account. This rule also is substantially similar to the block trading rules maintained by existing DCMs.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[30] The RFA focuses on direct impact to small businesses and not on indirect impacts on these businesses, which may be tenuous and difficult to discern.[31] The CFTC believes that this proposal would not have a significant economic impact on a substantial number of small entities.

1. Effect of the Proposed Rulemaking

This release proposes a rule that would prohibit the aggregation of orders for different trading accounts in order to satisfy the minimum block size, or cap size requirement. The proposed rule further provides that aggregation is permissible if done on a DCM or SEF by a person who: (i)(A) Is a CTA who is registered pursuant to Section 4n of the Act, or is exempt from registration under the Act, or a principal thereof, and has discretionary trading authority or directs client accounts, (B) is an investment adviser who has discretionary trading authority or directs client accounts and satisfies the criteria of § 4.7(a)(2)(v) of the Commission's regulations, or (C) is a foreign person who performs a similar role or function to the persons described in (A) or (B) and is subject as such to foreign regulation, and (ii) has more than $ 25,000,000 in total AUM.

[26] *Id.*

[27] A majority of DCMs currently maintain similar rules permitting certain CTAs, investment advisors and foreign persons to aggregate. *See, e.g.,* CME Rulebook, rule 526 (providing an exception for block transactions by permitting aggregation if done by a CTA registered or exempt from registration under the Act, including without limitation, any investment adviser registered or exempt from registration under the Investment Adviser's Act of 1940 * * * provided that such advisers have total AUM exceeding $25 million and the block trade is suitable for the customers of such advisors. *See also,* CBOE Futures Exchange LLC (rule 415(a(i)); Chicago Board of Trade (rule 526I); CME (rule 526I); ELX Futures, L.P. (rule IV–16(a)); Eris Exchange, LLC (rule 601(b)(10)); Green Exchange, LLC (rule 602(j)); ICE Futures ((rule 4.31(a)(ii)(B)); Nasdaq OMX Futures Exchange, Inc., (rule E23); New York Mercantile Exchange, Inc. (rule 526I); NYSE Liffe US, LLC (rule 423(a)(i)); and OneChicago LLC Futures Exchange (rule 417(a)(i)).

[28] Parties that are non-ECPs may not enter into any swap transactions, including blocks, except on or subject to the rules of a DCM. Specifically, section 2(e) of the CEA provides that ''[i]t shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on, or subject to the rules of, a board of trade designated as a contract market under section 5.'' 7 U.S.C. 2(e).

[29] Most DCMs that permit block trading require that parties to the block trade must be ECPs with a limited exception for CTAs. The following DCMs have rules excepting CTAs from the requirement that parties to a block trade must be ECPs: CBOE Futures Exchange LLC (rule 415(a)(ii)); Chicago Board of Trade (rule 526I); CME (rule 526I); ELX Futures, L.P. (rule IV–16(c)); Eris Exchange, LLC (rule 601(b)(10)); Green Exchange, LLC (rule 602(a) and (j)); ICE Futures (rule 4.31(a)(i)); Nasdaq OMX Futures Exchange, Inc., (rule E23(d)); New York Mercantile Exchange, Inc. (rule 526I); NYSE Liffe US, LLC (rule 423(a)(ii)); and OneChicago LLC Futures Exchange (rule 417(a)(ii)).

[30] *See* 5 U.S.C. 601 *et seq.*

[31] *See Whitman* v. *Am. Trucking Ass'ns,* 531 U.S. 457 (2001); *Am. Trucking Assns.* v. *EPA,* 175 F.3d 1027, 1043 (D.C. Cir. 1985); *Mid-Tex Elec. Coop., Inc.* v. *FERC,* 773 F.2d 327, 340 (DC Cir. 1985).

This release also proposes under new § 43.6(i)(1) a provision that describes the eligible parties to a block trade. The proposed rule provides that parties to a block trade must be ''eligible contract participants,'' as that term is defined under Section 1a(18) of the CEA and the Commission's regulations. The proposed rule further provides that a DCM may allow: (i) A CTA who is registered pursuant to Section 4n of the Act, or exempt from registration under the Act, or a principal thereof, who has discretionary trading authority or directs client accounts, (ii) an investment adviser who has discretionary trading authority or directs client accounts and satisfies the criteria of § 4.7(a)(2)(v) of the Commission's regulations, or (iii) a foreign person who performs a similar role or function to the persons described in (i) or (ii) and is subject as such to foreign regulation, to transact block trades on behalf of their customers who are not eligible contract participants, if such CTA, investment adviser or foreign person has more than $25,000,000 in total AUM.

The CFTC is of the view that this proposal may affect primarily the following entities: DCMs, futures commission merchants (''FCMs''), ECPs, swap dealers, major swap participants, certain CTAs, SEFs and certain investment advisers. The majority of entities impacted by this proposed rulemaking have been determined by the Commission not to be small entities. To the extent that a small number of small entities may be affected by the proposed rules, the Commission believes, as described below, that the proposed rules would not have a significant economic impact on a substantial number of such entities.

2. Specific Entities That May Be Small Entities

As noted above, the Commission has previously determined that DCMs, FCMs, and ECPs are not small entities for purposes of the Regulatory Flexibility Act.[32] Certain other entities that may be affected by this rulemaking, including SDs, MSPs and SEFs, have been certified by the Commission not to be small entities in other recent rulemakings implementing the requirements of the Dodd-Frank Act.[33]

a. Entities affected under § 43.6(h)(6): FCMs, CTAs, and investment advisers.

As noted above, the CFTC previously has determined that registered FCMs are not small entities for purposes of the RFA based upon, among other things, the registration requirements that FCMs must meet, including certain minimum financial requirements that enhance the protection of customers' segregated funds and protect the financial condition of FCMs generally.[34] With respect to certain CTAs[35] and investment advisers who would not be permitted to aggregate under the proposed rule, the Commission notes that the same provisions embodied in the proposed rule are currently required by DCM rules (under rules accepted by the Commission) and thus, such entities currently must comply with the same aggregation prohibition. Thus, all DCMs that permit aggregation for purposes of the block size requirement, only permit aggregation by CTAs, investment advisers and foreign persons that have more than $25,000,000 in total AUM. Accordingly, the Commission believes that this rule does not impact entities that heretofore have not been able to aggregate. To the extent that certain CTAs and investment advisers with less than $25,000,000 AUM are not currently permitted to aggregate, the Commission's codification of these rules would not have any significant economic impact on a substantial number of small entities.

b. Entities affected under § 43.6(i)(1): Certain non-ECP participants on DCMs, certain investment advisors, and FCMs.

New § 43.6(i)(1) provides that parties to a block trade must be ''eligible contract participants,''[36] as that term is defined under Section 1a(18) of the CEA and § 1.3 of the Commission's regulations, except for certain CTAs, investment advisers or foreign persons performing a similar role or function having more than $25,000,000 in total AUM, which may transact block trades for customers who are not ECPs. As indicated above, certain CTAs and investment advisers that have less than $25,000,000 in AUM would not be covered under the proposed rule because the provision embodied in the proposed rule is substantially the same as is currently required by DCM rules (under rules accepted by the Commission). Similarly, any non-ECP participants who trade on DCMs also would be prohibited under current DCM rules from directly entering into a block transaction unless their qualifying CTA, investment adviser, or foreign person acts on their behalf. To the extent that these entities are not currently permitted to aggregate, the Commission's codification of these rules would not have any significant economic impact on a substantial number of small entities. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a significant economic impact on a substantial number of small businesses. Nonetheless, the Commission specifically requests comment on the economic impact that this notice of proposed rulemaking may have on small entities.

B. Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (''PRA'') are, among other things, to minimize the paperwork burden to the private sector, ensure that any collection of information by a government agency is put to the greatest possible uses, and minimize duplicative information collections across the government.[37] The PRA applies to all information, ''regardless of form or format,'' that a government is ''obtaining, causing to be obtained, [or] soliciting'' and requires ''disclosure to third parties or the public, of facts or opinions,'' when the information collection calls for ''answers to identical reporting or recordkeeping requirements imposed, on ten or more persons[.]''[38] The PRA requirements have been determined to include not only mandatory but also voluntary information collections, and include both written and oral communications.[39]

The proposed rules would not impose any new recordkeeping or information collection requirements, or other collections of information that require approval of the Office of Management and Budget (''OMB'') under the PRA. The proposed rules are covered by existing collection requirements and would not change existing collection

[32] *See,* respectively and as indicated, 47 FR 18618, 18619, Apr. 30, 1982 (DCMs, CPOs, FCMs, and large traders); and, 66 FR 20740, 20743, Apr. 25, 2001 (ECPs).

[33] *See* respectively, Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, 2620 (Jan. 19, 2012) (swap dealers and major swap participants); Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest, 75 FR 63732, 63746 (Oct. 18, 2010) (SEFs); Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 76 FR 29818, 29868 (May 23, 2011) (Products).

[34] *See supra* note 32.

[35] The Commission may determine on a case-by-case basis whether CTAs are not small entities for the purpose of the RFA based upon a case by case determination. *See* 47 FR 18618, 18620 (Apr. 30, 1982).

[36] ECPs have been determined not to be small entities. *See* 66 FR 20740, 20743 (Apr. 25, 2001).

[37] *See* 44 U.S.C. 3501.

[38] 44 U.S.C. 3502.3(A)(i).

[39] *See* 5 CFR 1320.3(c)(1).

requirements.[40] The Commission invites public comment on the accuracy of its estimate that no additional recordkeeping or information collection requirements or changes to existing collection requirements would result from the rules proposed herein.

C. Cost-Benefit Considerations

Section 15(a) of the CEA [41] requires the Commission to consider the costs and benefits of its actions before promulgating a regulation or issuing an order under the CEA. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the Section 15(a) factors.

The baseline for the Commission's assessment of costs and benefits attributable to its discretionary actions in this rulemaking is the costs and benefits that would otherwise exist today (*i.e.,* post-Dodd-Frank Act enactment) absent this Commission action. The Commission recognizes that before the Dodd-Frank Act, swap transactions were executed over-the-counter and were not publicly reported. One of the implications of the Dodd-Frank Act is that most swap transactions are required to be publicly disseminated by SDRs as soon as technologically practicable, unless the notional value of the swap transaction meets the minimum block trade threshold.[42] That is the baseline for the Commission's proposed assessment of costs and benefits in this release. The Commission proposes that costs and benefits with respect to block trade thresholds are already accounted for in the Further Proposal and that this rule only considers the additional costs and benefits relevant to proposed § 43.6(h)(6) and proposed § 43.6(i).

1. Costs and Benefits Relevant to Proposed § 43.6(h)(6)—Aggregation

The Commission is proposing § 43.6(h)(6) to specify that, except as otherwise provided, it is impermissible to aggregate orders for different accounts in order to satisfy minimum block trade or cap size requirements. The proposed rule further provides that aggregation may be permitted on a DCM or SEF if done by a person who: (i)(A) Is a CTA who is registered pursuant to Section 4n of the Act or is exempt from registration under the Act, or a principal thereof, and has discretionary trading authority or directs client accounts, (B) is an investment adviser who has discretionary trading authority or directs client accounts and satisfies the criteria of § 4.7(a)(2)(v) of the Commission's regulations, or (C) is a foreign person who performs a role or function similar to the persons described in (A) or (B) and is subject as such to foreign regulation, and (ii) has more than $25,000,000 in total AUM.

Costs

The Commission expects that there will be some incremental cost attendant to compliance with proposed § 43.6(h)(6), and seeks data from the public in order to quantify the same. The Commission believes that the overall benefits to the market of allowing for the aggregation of orders under certain circumstances (*i.e.,* if done on a designated contract market or a swap execution facility by certain CTAs, investment advisers or foreign persons) will mitigate costs of reduced market liquidity that could result from execution of such transactions away from the centralized marketplace. The Commission also expects there to be some advisors who will be prohibited from aggregating orders for different trading accounts in order to satisfy the minimum block size, or cap size requirements. The Commission also proposes that as a result of some advisors not being allowed to aggregate, there might be some minimal unquantifiable cost associated with a decrease in competition among such traders in the market. The Commission seeks comment on these and any other costs that may result from this proposal. In particular, and as noted above, the WMBA claimed in its comment letter that ''work-up'' or ''join-the-trade'' periods be permitted to satisfy the block trade requirements, and that ''the public dissemination of incremental activity that would otherwise constitute a block trade could jeopardize identification of counterparties and materially reduce market liquidity.'' [43] The Commission seeks comment on the costs and benefits of the rules proposed in this release with respect to the specific implications claimed by WMBA.

Benefits

The proposed rule is designed, in large part, to prevent circumvention of the exchange trading requirements and of the real-time reporting obligations associated with non-block transactions. Absent this prohibition, the goals of the Commission's regulations regarding block trading, namely increased transaction transparency, better price discovery and improved competitiveness in the markets as well as better risk management, could be frustrated by those whose trades individually fail to meet the minimum block trade threshold (and cap size threshold as a result), but nevertheless achieve the benefits intended for extraordinarily large positions by aggregating those individual trades. In other words, such entities would be able to evade the exchange-trading and reporting obligations that are integral to price transparency. The Commission seeks comment on these and any other benefits that may result from this proposal.

Section 15(a) Factors

(1) Protection of market participants and the public.

The Commission believes that the proposed rule would protect market participants from unfair practices by preventing trades that do not meet the minimum block trade threshold from enjoying extended reporting times. This requirement would mean that trades that are not extraordinarily large, and hence, that do not need extra reporting time would not qualify as block trades and would be made public as soon as technologically practicable. Hence, the proposed rule would increase transparency of non-block transactions, and thus, would protect market participants by informing their trading determinations through increased transparency and price discovery.

(2) Efficiency, competitiveness, and financial integrity of the futures markets.

The Commission expects the prohibition of aggregation of trades to improve efficiency and competitiveness in the markets by allowing more trades to be reported without the time delay that is applied to qualifying block trades. This requirement would mean that a higher number of trades would be eligible for real time reporting, and that

[40] *See* 77 FR 1182 (Jan. 9, 2012), as amended by the Further Proposal. OMB has assigned control number 3038–0070 to the existing collection of information, which is titled ''Part 43—Real-Time Public Reporting.''

[41] 7 U.S.C. 19(a).

[42] The Commission notes that for an initial interim period, as outlined in § 43.5 of the Adopting Release, all transactions will be treated as block trades and will enjoy delayed reporting temporarily.

[43] WMBA comment letter at 4–5 (Feb. 7, 2011).

would increase market transparency as well as promote competition in the swap markets. The rule also would protect the integrity of the derivatives market by ensuring that smaller trades, which do not qualify as block transactions, are executed on the trading system where there is pre-trade and post-trade transparency.

The Commission also recognizes that advisors who are prohibited from aggregating orders in order to satisfy the minimum block size or cap size requirements might not trade at the most favorable prices in the market, which might have a negative effect on the number of such traders in the market. While the Commission expects that competition in the market may be negatively affected as a result of prohibiting aggregation, the Commission anticipates that the positive effects of the proposed rule on competition outweigh its negative effects.

(3) Price discovery.

The Commission expects the proposed rule to improve price discovery in the swap markets by preventing aggregation of trades and as a result promoting more trades to be publicly reported as soon as technologically practicable. This would result in enhanced swap market price discovery, since market participants and the public would be able to observe real-time pricing information for a higher percentage of transactions in the market. In addition, the Commission expects that the rule would enhance price discovery by ensuring that smaller trades, which do not qualify as block transactions, are executed on the trading system where there is pre-trade and post-trade transparency and where buyers and sellers may make informed trading decisions based on the market's transparency.

(4) Sound risk management practices.

The Commission anticipates that the proposed criteria, if adopted, would likely result in enhanced price discovery as discussed above. With better and more accurate data, swap market participants would likely be better able to measure and manage risk. The Commission proposes that if the prohibition of aggregation of trades was not adopted, swap transactions may not be reported to an SDR ''as soon as technologically practicable.'' The Commission also proposes that by preventing this delay in the reporting period of a swap transaction to an SDR, the Commission will possess the information it needs to monitor the transfer and positions of risk among counterparties in the swaps market.

(5) Other public interest considerations.

The Commission has not identified any other public interest considerations regarding the proposed rule.

2. Costs and Benefits Relevant to Proposed § 43.6(i)—Eligible Block Trade Parties

Costs

Proposed § 43.6(i)(1) requires that parties to a block trade must be eligible contract participants, as defined under the CEA and Commission regulations, except that a DCM may allow: (i) A CTA registered pursuant to Section 4n of the Act or exempt from registration under the Act, or a principal thereof, and who has discretionary trading authority or directs client accounts, (ii) an investment adviser who has discretionary trading authority or directs client accounts and satisfies the criteria of § 4.7(a)(2)(v) of the Commission's regulations, or (iii) a foreign person who performs a similar role or function to the persons described in (i) or (ii) and is subject as such to foreign regulation, to transact block trades for customers who are not eligible contract participants, if such CTA, investment adviser or foreign person has more than $25,000,000 in total AUM. This proposed rule codifies, in part, the requirement under Section 2(e) of the CEA, which requires that ''[i]t shall be unlawful for any person, other than an eligible contract participant, to enter into a swap unless the swap is entered into on, or subject to the rules of * * * a designated contract market.'' In addition, the provisions allowing certain entities (as described in this release) to enter into block trades on behalf of their non-ECP customers on DCMs is substantially similar to the existing DCM rules that allow block trading in the futures market.

Proposed § 43.6(i)(2) further provides that no person may conduct a block trade on behalf of a customer unless the person receives prior written instruction or consent to do so. The proposed rule further provides that such instruction or consent may be provided in the power of attorney or similar document by which the customer provides the person with discretionary trading authority or the authority to direct the trading in its account. The Commission is of the view that the cost associated with the written instruction or consent is minimal. The Commission estimates that a prior written instruction or consent requirement would impose an initial non-recurring burden of approximately 2 personnel hours at an approximate cost of $155.54 for each CTA, investment adviser or foreign person.[44]

Benefits

The Commission has determined that the benefits of proposed § 43.6(i) are significant. The proposed rule, if adopted, would allow customers who are not ECPs to engage in block trade transactions through certain entities as outlined in the rule. By permitting certain CTAs, investment advisers and foreign persons to transact swaps on behalf of non-ECP customers, the rule provides important safeguards for non-ECPs when entering into block transactions in swaps. The Commission believes that access to block trades would allow customers who are not ECPs to diversify their risk or improve their investment strategies. In addition, the Commission also anticipates the access to block trades for non-ECPs to increase their participation in swap markets, increasing liquidity in the markets for everyone.

Section 15(a) Factors

(1) Protection of market participants and the public.

The Commission does not anticipate the proposed rule to have any significant effect on the protection of market participants and the public.

(2) Efficiency, competitiveness, and financial integrity of the futures markets.

The Commission expects the proposed rule to improve competitiveness in the markets by allowing customers who are not ECPs to have access to block trades through certain CTAs, investment advisers and

[44] Using wage rate estimates based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association (''SIFMA''), the estimate is calculated as follows: Compliance manager at 2 hours. A senior programmer's adjusted hourly wage is $77.77, estimated using the following calculations:

(1) [(2009 salary + bonus) * (salary growth per professional type, 2009–2010)] = Estimated 2010 total annual compensation. The most recent data provided by the SIFMA report describe the 2009 total compensation (salary + bonus) by professional type, the growth in base salary from 2009 to 2010 for each professional type, and the 2010 base salary for each professional type; thus, the Commission estimated the 2010 total compensation for each professional type, but, in the absence of similarly granular data on salary growth or compensation from 2010 to 2011 and beyond, did not estimate dollar costs beyond 2010.

(2) [(Estimated 2010 total annual compensation)/(1,800 annual work hours)] = Hourly wage per professional type.

(3) [(Hourly wage) * (Adjustment factor for overhead and other benefits, which the Commission has estimated to be 1.3)] = Adjusted hourly wage per professional type.

(4) [(Adjusted hourly wage) * (Estimated hour burden for compliance)] = Dollar cost of compliance for each hour burden estimate per professional type.

foreign persons. The Commission anticipates an increase in competitiveness due to the fact that more customers would use the swap markets as a result of this rule. An increased participation in a market would also serve to increase liquidity, as well as competition, in that market.

(3) Price discovery.

The Commission does not anticipate the proposed rule to have any significant effect on price discovery in the market.

(4) Sound risk management practices.

The Commission does not anticipate the proposed rule to have any significant effect on risk management practices.

(5) Other public interest considerations.

The Commission has not identified any other public interest considerations regarding the proposed rule.

The Commission requests comments on its cost and benefit considerations with respect to the proposed rule, and any alternatives. The Commission specifically requests that commenters provide data from which the Commission may quantify the costs or benefits of the proposed rule.

IV. Rule Text

List of Subjects in 17 CFR Part 43

Large notional off-facility trades, Block trades, Appropriate minimum block sizes, Real-time public reporting, Public dissemination, Cap size, Anonymity, Swap category.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR part 43 as set forth below:

PART 43—[AMENDED]

1. The authority citation for part 43 shall continue to read as follows:

Authority: 7 U.S.C. 2(a), 12a(5) and 24a, amended by Pub. L. 111–203, 124 Stat. 1376 (2010).

2. Add section 43.6(h)(6) to part 43 to read as follows:

§ 43.6(h)(6) Aggregation.

Except as otherwise stated in this paragraph, the aggregation of orders for different accounts in order to satisfy the minimum block trade size or the cap size requirement is prohibited. Aggregation is permissible on a designated contract market or swap execution facility if done by a person who:

(i)(A) Is a commodity trading advisor registered pursuant to Section 4n of the Act, or exempt from registration under the Act, or a principal thereof, who has discretionary trading authority or directs client accounts,

(B) Is an investment adviser who has discretionary trading authority or directs client accounts and satisfies the criteria of § 4.7(a)(2)(v) of this chapter, or

(C) Is a foreign person who performs a similar role or function as the persons described in subparagraphs (A) or (B) and is subject as such to foreign regulation; and,

(ii) Has more than $25,000,000 in total assets under management.

3. Add Section 43.6(i) to part 43 to read as follows:

§ 43.6(i) Eligible Block Trade Parties.

(1) Parties to a block trade must be ''eligible contract participants,'' as defined in Section 1a(18) of the Act and the Commission's regulations. However, a designated contract market may allow: (i) A commodity trading advisor registered pursuant to Section 4n of the Act, or exempt from registration under the Act, or a principal thereof, who has discretionary trading authority or directs client accounts, (ii) an investment adviser who has discretionary trading authority or directs client accounts and satisfies the criteria of § 4.7(a)(2)(v) of this chapter, or (iii) a foreign person who performs a similar role or function as the persons described in (i) or (ii) of this paragraph and is subject as such to foreign regulation, to transact block trades for customers who are not eligible contract participants if such commodity trading advisor, investment adviser or foreign person has more than $25,000,000 in total assets under management.

(2) A person transacting a block trade on behalf of a customer must receive prior written instruction or consent from the customer to do so. Such instruction or consent may be provided in the power of attorney or similar document by which the customer provides the person with discretionary trading authority or the authority to direct the trading in its account.

Issued in Washington, DC, on June 20, 2012, by the Commission.

David A. Stawick,

Secretary of the Commission.

Appendix to Rules Prohibiting the Aggregation of Orders To Satisfy Minimum Block Sizes or Cap Size Requirements, and Establishing Eligibility Requirements for Parties to Block Trades

Commission Voting Summary

Note: The following appendix will not appear in the Code of Federal Regulations.

On this matter, Chairman Gensler and Commissioners Sommers, Chilton, O'Malia and Wetjen voted in the affirmative; no Commissioner voted in the negative.

[FR Doc. 2012–15481 Filed 6–26–12; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0215]

RIN 1625–AA08

Special Local Regulation, Underwater Music Festival, Carr Inlet, Cutts Island, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a Special Local Regulation (SLR) around Cutts Island located in Carr Inlet, WA. This SLR is necessary to ensure the safety of the maritime public during the Underwater Music Festival and would do so by establishing speed and towing restrictions, limiting the number of vessels permitted to raft together and limiting the distance persons are permitted to swim from vessels or shore.

DATES: Comments and related material must be received by the Coast Guard on or before July 17, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0215 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email ENS Anthony P.

LaBoy, Coast Guard Sector Puget Sound Waterways Management Division; telephone 206–217–6323, email *SectorPugetSoundWWM@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0215), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2012–0215'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0215'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

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

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Ensign Anthony LaBoy at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Basis and Purpose

The Underwater Music Festival is an event which includes musical performances from a barge. Spectators approach the barge in their private recreational vessels to view the concert. This event was first held in 2009 around Cutts Island in Carr Inlet, WA, and has grown substantially since its first year. In 2010 there were approximately 250 vessels and several hundred persons in attendance surrounding the event sponsor barge. In 2011, there were approximately 700 vessels and 3,000 persons in attendance. In 2011, on-scene Coast Guard members observed behaviors that caused concern including vessels traveling at speeds which created wakes, large groups of vessels rafted together, and participants swimming without personal floatation devices (PFD). Regardless of PFD wear, persons swimming too far from land or vessels in an area of high vessel congestion creates a dangerous situation because they are difficult to see by vessels transiting in the area. At other similar marine events, swimmers have suffered injuries such as propeller strikes. Requiring swimmers to stay near land or their vessels will help prevent such injuries because transiting vessels will stay clear of other vessels and land, thereby avoiding even those swimmers that cannot be easily seen. Due to the increasing popularity and number of event participants, a Special Local Regulation (SLR) is necessary to ensure safety of the event spectators and participants. This rule would mitigate the risk of the event by controlling unsafe actions within the boundaries of the SLR.

Discussion of Proposed Rule

The Coast Guard is proposing to establish a SLR, which encompasses all waters within one nautical mile of Cutts Island, WA. By imposing the following restrictions, the Coast Guard will limit the risk to life and property of the marine event participants:

(a) All vessels would be required to transit at the minimum speed necessary to maintain course, minimizing vessel wakes. Wakes produced by vessels traveling at higher speeds could negatively impact unsuspecting anchored vessels or persons swimming in the vicinity of vessels.

(b) Towing would not be permitted inside the SLR area unless prior permission was granted by on-scene Coast Guard Patrol. This would allow for debris removal by designated vessels and for properly equipped and trained tow vessels to assist disabled vessels while preventing unqualified vessels from creating further unsafe conditions while attempting to assist disabled vessels.

(c) No more than six vessels would be permitted to raft together. Large groups of rafted vessels restrict the ability of response and law enforcement vessels to transit and respond to emergencies.

(d) Any person swimming or otherwise entering the water would be required to remain within 10 feet of a vessel or shore. This ensures participants are able to exit the water

under their own means and prevent potential injuries that could be caused by persons in the water being struck by transiting vessels.

(e) The Coast Guard would maintain a patrol for the duration of this event. The Coast Guard Patrol of this area is under the direction of the Coast Guard Patrol Commander who is empowered to control the movement of vessels inside the regulation boundaries. The Patrol Commander may be assisted by other federal, state, and local law enforcement agencies.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard bases this finding on the fact that the proposed Special Local Regulation would be in place for a limited period of time and vessel traffic would be able to transit around the regulated area.

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which may be small entities; the owners and operators of vessels intending to operate in the waters encompassed within the regulated area. The rule would not have a significant economic impact on a substantial number of small entities because the Special Local Regulation will be in place for a limited period of time and vessel traffic will be able to transit around the regulated area.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Ensign Anthony P. LaBoy at the telephone number or email address indicated under the **FOR FUTHER INFORMATION CONTACT** section of this notice.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on 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 have determined that it does not have implications for federalism.

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.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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.

Technical Standards

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

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. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of a Special Local Regulation. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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: U.S.C. 1233.

2. Add § 100.1310 to read as follows:

§ 100.1310 Special Local Regulation, Underwater Music Festival, Carr Inlet, Cutts Island, WA

(1) *Effective Period.* This rule is effective annually during the Underwater Music Festival which typically occurs in late July or early August.

(2) *Regulated Area.* The following area is specified as a regulated area: All waters encompassed within one nautical mile of Cutts Island, WA located at approximately 47°19′15″ N, 122°41′15″ W.

(3) *Special Local Regulations.*

(a) The Coast Guard will maintain a patrol consisting of Coast Guard vessels for the duration of this event. The Coast Guard Patrol of this area is under the direction of the Coast Guard Patrol Commander who is empowered to control the movement of vessels inside the boundaries of the regulation during the time in which this regulation is in effect. The Patrol Commander may be assisted by other federal, state, and local law enforcement agencies.

(b) Vessels are required to transit the regulated area at the minimum speed necessary to maintain course, unless required to maintain speed by the Navigation Rules, and shall proceed as directed by the Coast Guard Patrol Commander.

(c) Only vessels authorized by the Patrol Commander or other law enforcement agencies shall be permitted to engage in towing.

(d) No more than six vessels are permitted to raft together.

(e) Any person swimming or otherwise entering the water shall remain within 10 feet of a vessel or shore.

(4) *Notice of Enforcement.* The Captain of the Port will provide notice of the enforcement of this Special Local Regulation by all appropriate means to ensure the widest dissemination among the affected segments of the public, as practicable; such means of notification may include but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners.

Dated: May 28, 2012.

K.A. Taylor,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. 2012–15640 Filed 6–26–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0398; FRL–9692–5]

Partial Approval and Disapproval of Air Quality Implementation Plans; Arizona; Infrastructure Requirements for Ozone and Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove a State Implementation Plan (SIP) revision submitted by the State of Arizona to address the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 1997 8-hour ozone national ambient air quality standards (NAAQS) and the 1997 and 2006 NAAQS for fine particulate matter ($PM_{2.5}$). Section 110(a) of the CAA requires that each State adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA. On September 18, 2008 and October 14, 2009, the Arizona Department of Environmental Quality (ADEQ) submitted a revision to Arizona's SIP, which describes the State's provisions for implementing, maintaining, and enforcing the standards listed above. On June 1, 2012, ADEQ submitted a supplement to these SIP revisions, including certain statutory and regulatory provisions. We are taking comments on this proposal and plan to follow with a final action.

DATES: Written comments must be received on or before July 27, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R09–OAR–2012–0398, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: buss.jeffrey@epa.gov.*
3. *Fax:* 415–947–3579.
4. *Mail or deliver:* Jeffrey Buss (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Deliveries are only accepted during the Regional Office's normal hours of operation.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or email. *http://www.regulations.gov* is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business

hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jeffrey Buss, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 947–4152, *buss.jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we,'' ''us,'' and ''our'' refer to EPA.

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I. Background

A. Statutory Framework

Section 110(a)(1) of the CAA requires states to make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' that provides for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. Many of the section 110(a)(2) SIP elements relate to the general information and authorities that constitute the ''infrastructure'' of a state's air quality management program and SIP submittals that address these requirements are referred to as ''infrastructure SIPs.'' These infrastructure SIP elements include:

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C): Program for enforcement of control measures and regulation of new and modified stationary sources.
- Section 110(a)(2)(D)(i): Interstate pollution transport.
- Section 110(a)(2)(D)(ii): Interstate and international pollution abatement.
- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local and regional government agencies.
- Section 110(a)(2)(F): Stationary source monitoring and reporting.
- Section 110(a)(2)(G): Emergency episodes.
- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(J): Consultation with government officials, public notification, and prevention of significant deterioration (PSD) and visibility protection.
- Section 110(a)(2)(K): Air quality modeling and submission of modeling data.
- Section 110(a)(2)(L): Permitting fees.
- Section 110(a)(2)(M): Consultation/participation by affected local entities.

Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) and are therefore not addressed in this action. These elements relate to part D of title I of the CAA, and submissions to satisfy them are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the same time nonattainment area plan requirements are due under section 172. The two elements are: (i) Section 110(a)(2)(C) to the extent it refers to permit programs required under part D (nonattainment New Source Review (NSR)), and (ii) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure elements related to the nonattainment NSR portion of section 110(a)(2)(C) or related to 110(a)(2)(I).

B. Regulatory History

On July 18, 1997, EPA issued a revised NAAQS for ozone [1] and a new NAAQS for fine particulate matter ($PM_{2.5}$).[2] EPA subsequently revised the 24-hour $PM_{2.5}$ NAAQS on September 21, 2006.[3] Each of these actions triggered a requirement for states to submit an infrastructure SIP to address the applicable requirements of section 110(a)(2) within three years of issuance of the new or revised NAAQS.

On March 10, 2005, EPA entered into a Consent Decree with Earthjustice that obligated EPA to make official findings in accordance with section 110(k)(1) of the CAA as to whether states had made required complete SIP submissions, pursuant to sections 110(a)(1) and (2), by December 15, 2007 for the 1997 8-hour ozone NAAQS and by October 5, 2008 for the 1997 $PM_{2.5}$ NAAQS. EPA made such findings for the 1997 8-hour ozone NAAQS on March 27, 2008 (73 FR 16205) and for the 1997 $PM_{2.5}$ NAAQS on October 22, 2008 (73 FR 62902). In each case, EPA found that Arizona had failed to make a complete submittal to satisfy the requirements of section 110(a)(2) for the relevant pollutant. On September 8, 2011, EPA found that Arizona had failed to make a complete submittal to satisfy the requirements of section 110(a)(2)(G) for the 2006 24-hour $PM_{2.5}$ NAAQS (76 FR 55577).

C. Scope of the Infrastructure SIP Evaluation

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on those infrastructure SIP submissions.[4] Those commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements in other proposals that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''). EPA notes that there are two other substantive issues for which EPA likewise stated in other proposals that it would address the issues separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source NSR''); and (ii) existing provisions for Prevention of Significant Deterioration programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). In light of the comments, EPA believes that its statements in various

[1] The 8-hour averaging period 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).

[2] The annual $PM_{2.5}$ standard was set at 15 micrograms per cubic meter ($\mu g/m^3$), based on the 3-year average of annual arithmetic mean $PM_{2.5}$ concentrations from single or multiple community-oriented monitors and the 24-hour $PM_{2.5}$ standard was set at 65 $\mu g/m^3$, based on the 3-year average of the 98th percentile of 24-hour $PM_{2.5}$ concentrations at each population-oriented monitor within an area (62 FR 38652).

[3] The final rule revising the 24-hour NAAQS for $PM_{2.5}$ from 65 $\mu g/m^3$ to 35 $\mu g/m^3$ was published in the **Federal Register** on October 17, 2006 (71 FR 61144).

[4] See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket #EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5).

proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth.

EPA intended the statements in other proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP-approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues.

Unfortunately, the commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issues in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements in those other proposals, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately from actions on infrastructure SIP submissions.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[5] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[6]

Notwithstanding that section 110(a)(2) provides that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[7] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Likewise, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections.[8] Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[9]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirements applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of

[5] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[6] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each state's SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. See, e.g., ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162 (May 12, 2005) (defining, among other things, the phrase ''contribute significantly to nonattainment'').

[7] See, e.g., Id., 70 FR 25162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[8] For example, EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. See, ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director, Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006. In addition, EPA bifurcated the action on these ''interstate transport'' provisions within section 110(a)(2) and in most instances, substantive administrative actions occurred on different tracks with different schedules.

[9] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these ozone and $PM_{2.5}$ NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[10] Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.''[11] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.''[12] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.''[13] For the one exception to that general assumption, however, *i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each State would work with its corresponding EPA regional office to refine the scope of a State's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the State's SIP for the NAAQS in question.

On September 25, 2009, EPA issued guidance to make recommendations to states with respect to the infrastructure SIPs for the 2006 $PM_{2.5}$ NAAQS.[14] In the 2009 Guidance, EPA addressed a number of additional issues that were not germane to the infrastructure SIPs for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS, but were germane to these SIP submissions for the 2006 $PM_{2.5}$ NAAQS. Significantly, neither the 2007 Guidance nor the 2009 Guidance explicitly referred to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance and the 2009 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in existing SIP provisions in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a comprehensive review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[15] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past

[10] See, ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director, Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the ''2007 Guidance'').

[11] Id. at page 2.

[12] Id. at attachment A, page 1.

[13] Id. at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicate that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

[14] See, ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T, Harnett, Director, Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

[15] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 76 FR 21639 (April 18, 2011).

approvals of SIP submissions.[16] Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[17]

II. The State's Submittals

On September 18, 2008, ADEQ submitted the ''Analysis of Clean Air Act Section 110(a)(2) Air Quality Control Program Elements for Arizona—$PM_{2.5}$,'' to address several elements of CAA section 110(a)(2) for the 1997 $PM_{2.5}$ NAAQS (''2008 Infrastructure Analysis'').[18] On October 14, 2009, ADEQ submitted the ''Arizona State Implementation Plan Revision under Clean Air Act Section 110(a)(2) and (2); 2006 $PM_{2.5}$ NAAQS, 1997 $PM_{2.5}$ NAAQS and 1997 8-hour Ozone NAAQS,'' to address all of the CAA section 110(a)(2) requirements except for section 110(a)(2)(G)[19] for these three NAAQS (''2009 Infrastructure Analysis'').[20] The 2009 Infrastructure Analysis includes public process documentation (including public comments) and evidence of adoption.

On June 1, 2012, ADEQ submitted the ''Proposed Supplement to the Arizona State Implementation Plan under Clean Air Act Section 110(a)(1) and (2): Implementation of [1997 $PM_{2.5}$ and 8-hour ozone NAAQS and 2006 $PM_{2.5}$ NAAQS], Parallel Processing Version'' (''2012 Supplement''). The 2012 Supplement includes a number of statutes and regulations that are currently effective under State law but that have not been adopted specifically for submittal to EPA as a SIP revision under CAA section 110. By letter dated June 1, 2012, ADEQ submitted unofficial copies of these statutes and regulations to EPA with a request for ''parallel processing''[21] and stated its intention to submit these statutes and regulations as a formal SIP submittal, following reasonable notice and public hearings, by late August 2012.[22] ADEQ amended this request by letter dated June 14, 2012, to remove several statutes and regulations from the 2012 Supplement.[23] With respect to two Pima County regulations included in the 2012 Supplement (rules 17.12.040 and 17.24.040), ADEQ has informed us that it is awaiting confirmation that the Pima County Department of Environmental Quality (PCDEQ) will commence a local rulemaking process to adopt these regulations as SIP revisions under CAA section 110 and thereafter submit the rules to ADEQ for transmittal to EPA.[24] In a separate proposal published in today's **Federal Register**, we are proposing to approve these Pima County regulations, among others, into the Arizona SIP contingent upon ADEQ's submittal of them as fully adopted SIP revisions. See ''Revisions to the Arizona State Implementation Plan, Arizona Department of Environmental Quality, Maricopa County Air Quality Department, and Pima County Department of Environmental Quality,'' proposed rule, signed June 15, 2012.

Because the 2009 Infrastructure Analysis includes comprehensive updates to and essentially supersedes the 2008 Infrastructure Analysis, we are proposing to act on the 2009 Infrastructure Analysis, as supplemented and amended by the 2012 Supplement. We refer to the 2009 Infrastructure Analysis and 2012 Supplement collectively as the ''2009 Infrastructure SIP.'' Although we are proposing to act only on the 2009 Infrastructure SIP, we have reviewed materials provided in the 2008 Infrastructure Analysis to the extent applicable to our evaluation.

III. EPA's Evaluation and Proposed Action

EPA has evaluated the 2009 Infrastructure SIP and the existing provisions of the Arizona SIP for compliance with the CAA section 110(a) requirements for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS. Our Technical Support Document (TSD) contains more detailed evaluations and is available in the public docket for this rulemaking, which may be accessed online at *http://www.regulations.gov,* docket number EPA–R09–OAR–2012–0398.

Based upon this analysis, EPA proposes to approve the 2009 Infrastructure SIP with respect to the following infrastructure SIP requirements:

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C) (in part): Program for enforcement of control measures and regulation of new and modified stationary sources.
- Section 110(a)(2)(D)(ii) (in part): Interstate pollution abatement and international air pollution.
- Section 110(a)(2)(E)(i): Adequate resources and legal authority.
- Section 110(a)(2)(E)(iii): State oversight of local or regional government agencies.
- Section 110(a)(2)(F): Stationary source monitoring and reporting.
- Section 110(a)(2)(G): Emergency episodes.
- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(J) (in part): Consultation with government officials and public notification.

[16] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[17] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344 (July 21, 2010)(proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011)(final disapproval of such provisions).

[18] *See* letter dated September 18, 2008, from Stephen A. Owens, Air Quality Director, ADEQ, to Wayne Nastri, Regional Administrator, EPA Region 9.

[19] In a separate rulemaking, EPA proposed to fully approve Arizona's SIP to address the requirements regarding air pollution emergency episodes in CAA section 110(a)(2)(G) for the 1997 8-hour ozone NAAQS. 77 FR 21911 (April 12, 2012).

[20] *See* letter dated October 14, 2009, from Eric C. Massey, Air Quality Director, ADEQ, to Laura Yoshii, Acting Regional Administrator, EPA Region 9.

[21] Under EPA's ''parallel processing'' procedure, EPA proposes rulemaking action concurrently with the State's proposed rulemaking. If the State's proposed plan is changed, EPA will evaluate that subsequent change and may publish another notice of proposed rulemaking. If no significant change is made, EPA will publish a final rulemaking on the plan after responding to any submitted comments. Final rulemaking action by EPA will occur only after the plan has been fully adopted by Arizona and submitted formally to EPA for approval into the SIP. See 40 CFR part 51, appendix V, section 2.3. We note that because ADEQ's rulemaking process here is solely for purposes of adopting the 2012 Supplement as a SIP revision under CAA section 110 and not for purposes of revising any of the statutes or regulations contained therein, we do not expect any significant changes between the proposed and final plans.

[22] *See* letter dated June 1, 2012, from Eric C. Massey, Air Quality Director, ADEQ, to Jared Blumenfeld, Regional Administrator, EPA Region 9.

[23] *See* letter dated June 14, 2012, from Eric C. Massey, Air Quality Director, ADEQ, to Jared Blumenfeld, Regional Administrator, EPA Region 9.

[24] *See* email dated June 14, 2012, from Danielle Dancho, ADEQ, to Jeanhee Hong, EPA Region 9.

• Section 110(a)(2)(L): Permitting fees.

• Section 110(a)(2)(M): Consultation/participation by affected local entities.

In addition, we are proposing to approve into the SIP certain statutory and regulatory provisions included in the 2009 Infrastructure SIP, as discussed in the TSD.[25] With respect to the requirements for stationary source monitoring and reporting in CAA section 110(a)(2)(F), our proposed approval is contingent upon receipt of fully adopted versions of the two Pima County regulations discussed above, which must go through a local SIP rulemaking process before ADEQ submits them to EPA as SIP revisions.[26] We propose, in the alternative, to disapprove the 2009 Infrastructure SIP with respect to the requirements of CAA section 110(a)(2)(F) in Pima County, if ADEQ does not submit these regulations as SIP revisions following all required procedures before we take final action on the 2009 Infrastructure SIP.

Simultaneously, we are proposing to disapprove the 2009 Infrastructure SIP with respect to the following infrastructure SIP requirements:

• Section 110(a)(2)(C) (in part): Permit program for regulation of new and modified stationary sources under part C of title I of the Act (PSD).

• Section 110(a)(2)(D)(i)(II): Provisions to prohibit interference with other states' PSD measures.

• Section 110(a)(2)(D)(ii) (in part): Interstate pollution abatement and international air pollution.

• Section 110(a)(2)(J) (in part): PSD.

• Section 110(a)(2)(K): Air quality modeling and submission of modeling data.

As explained more fully in the TSD, we are proposing to disapprove the 2009 Infrastructure SIP with respect to these requirements of CAA section 110(a)(2) because the Arizona SIP does not fully satisfy the statutory and regulatory requirements for Prevention of Significant Deterioration (PSD) permit programs under part C, title I of the Act. Both the Maricopa County Air Quality Department (MCAQD) and the Pima County Department of Environmental Quality (PDEQ) currently implement the Federal PSD program in 40 CFR 52.21 for all regulated NSR pollutants, pursuant to delegation agreements with EPA. 40 CFR 52.144.[27] Accordingly, although the Arizona SIP remains deficient with respect to PSD requirements in both Maricopa and Pima counties, these deficiencies are adequately addressed in both areas by the Federal PSD program. ADEQ implements a SIP-approved PSD program for all regulated NSR pollutants except for PM–10 and GHGs[28] (48 FR 19878, May 3, 1983), and the Pinal County Air Quality Control District (PCAQCD) implements a SIP-approved PSD program for all regulated NSR pollutants except for GHGs[29] (61 FR 15717, April 9, 1996, as amended by 65 FR 79742, December 20, 2000). EPA understands that both ADEQ and the PCAQCD intend to submit, in the near future, PSD SIP revisions addressing the deficiencies identified in our TSD.[30]

We are not proposing to act today on those elements of the 2009 Infrastructure SIP that address the requirements of section 110(a)(2)(D)(i)(I) of the Act regarding significant contribution to nonattainment or interference with maintenance in any other State (referred to as ''interstate transport'' provisions). EPA previously approved Arizona's interstate transport SIP as satisfying the requirements of CAA section 110(a)(2)(D)(i)(I) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. 72 FR 41629 (July 31, 2007). For purposes of the 2006 $PM_{2.5}$ NAAQS, EPA intends to propose action on the interstate transport element of the 2009 Infrastructure SIP in a subsequent rulemaking and to take final action on this element of the SIP by September 30, 2012, consistent with the terms of the consent decree entered October 20, 2011 in *WildEarth Guardians* v. *EPA,* Case No. 3:11–cv–00190.

Additionally, we are not proposing to act today on those elements of the 2009 Infrastructure SIP that address the requirements of section 110(a)(2)(D)(i)(II) of the Act regarding interference with measures to protect visibility in other states.[31] EPA intends to act on these visibility-related elements of the 2009 Infrastructure SIP in a subsequent rulemaking that will address the requirements of the Regional Haze program, under the terms of a separate consent decree.

Finally, we are not proposing to act today on the portion of the 2009 Infrastructure SIP that addresses requirements respecting state boards under CAA section 110(a)(2)(E)(ii). We will propose action on this element in a subsequent rulemaking.

Section 110(l) of the Act prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the Act. All of the elements of the 2009 Infrastructure SIP that we are proposing to approve, as explained in the TSD, would improve the SIP by replacing obsolete statutes or regulations and by updating the state and local agencies' SIP implementation and enforcement authorities. We propose to determine that our approval of these elements of the 2009 Infrastructure SIP would comply with CAA section 110(l) because the proposed SIP revision would not interfere with the on-going process for ensuring that requirements for RFP and attainment of the NAAQS are met, and the submitted SIP revision clarifies and updates the SIP. Our TSD contains a more detailed discussion of our evaluation.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of part D, title I of the CAA (CAA sections 171–193) or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP Call) starts a sanctions clock. The 2009 Infrastructure SIP was not submitted to meet either of

[25] Copies of these Arizona statutes and regulations are included in the 2012 Supplement, which is available in the docket for this action and online at *http://www.regulations.gov,* docket number EPA–R09–OAR–2012–0398.

[26] *See* fn. 24, above.

[27] See 59 FR 1730 (January 12, 1994) and ''Agreement for Delegation of Authority of the Regulations for Prevention of Significant Deterioration of Air Quality (40 CFR 52.21) Between U.S. EPA and MC,'' executed November 22, 1993; ''Agreement for Delegation of Authority of the Regulations for Prevention of Significant Deterioration of Air Quality (40 CFR 52.21) Between U.S. EPA and Pima County Air Quality Control District,'' executed April 14, 1994.

[28] For PM–10 and GHGs, ADEQ implements the Federal PSD program in 40 CFR 52.21 pursuant to delegation agreements executed in 1999 and 2011, respectively. 40 CFR 52.37; ''Agreement for Delegation of Authority of the PM–10 Regulations for Prevention of Significant Deterioration of Air Quality (40 CFR 52.21) Between EPA and Arizona DEQ,'' executed March 12, 1999''; ''U.S. EPA-Arizona Department of Environmental Quality Agreement for Delegation of Authority to Issue and Modify Greenhouse Gas Prevention of Significant Deterioration Permits Subject to 40 CFR 52.21,'' executed March 30, 2011.

[29] For GHGs, Pinal County implements the Federal PSD program in 40 CFR 52.21 pursuant to a delegation agreement executed in 2011. 40 CFR 52.37; ''U.S. EPA-Pinal County Air Quality Control District Agreement for Delegation of Authority to Issue and Modify Greenhouse Gas Prevention of Significant Deterioration Permits Subject to 40 CFR 52.21,'' executed August 10, 2011.

[30] On April 10, 2012, ADEQ submitted draft PSD program regulations to EPA with a request for ''parallel processing'' under 40 CFR part 51, appendix V. We intend to act on this PSD submittal expeditiously upon receipt of an official SIP revision containing ADEQ's fully adopted PSD regulations.

[31] EPA's action on this element of the 2009 Infrastructure SIP is not subject to the same consent decree and settlement agreement deadlines that apply to our action on most other elements of the 2009 Infrastructure SIP. See Consent Decree entered October 20, 2011 in *WildEarth Guardians* v. *EPA,* Case No. 3:11–cv–00190 (paragraph 22) and Settlement Agreement executed November 30, 2011 in *Sierra Club* v. *EPA,* Case No. 3:10–cv–04060 (paragraph 8(a)).

these requirements. Therefore, any action we take to finalize the described partial disapprovals will not trigger mandatory sanctions under CAA section 179.

In addition, CAA section 110(c)(1) provides that EPA must promulgate a Federal Implementation Plan (FIP) within two years after finding that a State has failed to make a required submission or disapproving a State implementation plan submission in whole or in part, unless EPA approves a SIP revision correcting the deficiencies within that two-year period.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., because this proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (e.g., higher offset requirements) may or will flow from this disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector.'' EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

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

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to disapprove would not 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. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

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

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law

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

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

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

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

EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 15, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012–15732 Filed 6–26–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0470; FRL–9692–4]

Revisions to the Arizona State Implementation Plan, Arizona Department of Environmental Quality, Maricopa County Air Quality Department, and Pima County Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Arizona Department of Environmental Quality (ADEQ), Maricopa County Air Quality Department (MCAQD), and Pima County Department of Environmental Quality (PCDEQ) portions of the Arizona State Implementation Plan (SIP) that EPA expects to be submitted by ADEQ. These revisions concern regulations that require monitoring and reporting of volatile organic compounds (VOC), oxides of nitrogen (NO_X), and particulate matter (PM) emissions from stationary sources. This proposed approval is based upon proposed regulations submitted by ADEQ and an accompanying request that EPA proceed with SIP review while the State and local agencies complete their public review and agency adoption processes. EPA will not take final action on these regulations until ADEQ submits the final adopted versions to EPA as a revision to the Arizona SIP. Final EPA approval of the regulations and incorporation of them into the Arizona SIP would make them federally enforceable under the Clean Air Act (CAA). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by July 27, 2012.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0470, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Rynda Kay, EPA Region IX, (415) 947–4118, *Kay.Rynda@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What rules did the State submit?

By letter dated June 1, 2012, ADEQ submitted to EPA on behalf of ADEQ, MCAQD, and PCDEQ, unofficial copies of several rules and statutes, with a request for approval of these provisions into the SIP by parallel processing.[1] See

[1] Under EPA's ''parallel processing'' procedure, EPA proposes rulemaking action concurrently with the State's proposed rulemaking. If the State's

June 1, 2012 letter to Jared Blumenfeld, Regional Administrator, EPA Region 9, from Eric Massey, Director, Air Quality, ADEQ. Table 1 lists the five rules addressed by this proposal.

TABLE 1—RULES SUBMITTED BY ARIZONA FOR PARALLEL PROCESSING

Local agency	Rule No.	Rule title
ADEQ	18–2–313	Existing Source Emission Monitoring.
ADEQ	18–2–327	Annual Emissions Inventory Questionnaire.
MCAQD	100, Section 500	Monitoring and Records.
PCDEQ	17.12.040	Reporting Requirements.
PCDEQ	17.24.040	Reporting for Compliance Evaluations.

The above rules have been adopted locally but have not been adopted specifically for purposes of approval into the federally enforceable SIP under CAA section 110. ADEQ has requested that MCAQD and PCDEQ adopt these regulations following public process for purposes of SIP approval and thereafter submit the rules to ADEQ for transmittal to EPA as SIP revisions. Concurrent with these county processes, ADEQ anticipates that it will schedule a public hearing in July 2012 on its proposal to submit these rules to EPA for incorporation into the SIP, and intends to submit the final SIP revision to EPA by late August 2012. We note that because the state and county rulemaking processes here are solely for purposes of adopting these regulations as SIP revisions under CAA section 110 and not for purposes of revising any of the regulations, we do not expect any substantive changes between the proposed and final submittals. Final approval of these rules, however, is contingent upon EPA's receipt of fully adopted rules that satisfy state and local procedural requirements for SIP submittals.

B. Are there other versions of these rules?

There are no SIP-approved versions of ADEQ Rule 18–2–327 or PCDEQ Rule 17.24.040. We approved an earlier version of ADEQ Rule 9–3–313 into the SIP on April 23, 1982 (47 FR 17483). The submitted rule ADEQ Rule 18–2–313 will replace the SIP rule ADEQ Rule 9–3–313. We approved an earlier version of MCAQD Rule 100, Section 504 into the SIP on February 10, 2005 (70 FR 7038). The submitted rule MCAQD Rule 100, Section 500 will replace SIP rule MCAQD Rule 100, Section 504. We approved an earlier version of PCDEQ Rule 622 into the SIP on April 16, 1982 (47 FR 16328). The submitted rule PCDEQ Rule 17.12.040 will replace the SIP rule PCDEQ Rule 622.

C. What is the purpose of the submitted rules?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. PM contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control VOC, NO_X, and PM emissions.

ADEQ Rule 18–2–313 establishes requirements for continuous emissions monitoring systems at certain fossil-fuel fired steam generators, sulfuric acid plants, nitric acid plants, and fluid bed catalytic cracking unit catalysts regenerators at petroleum refineries, if subject to an emission standard. ADEQ Rule 18–2–327 requires that every source subject to a permit complete and submit an annual emissions inventory questionnaire. PCDEQ Rule 17.12.040 establishes reporting requirements for emissions that exceed levels allowed under applicable regulations. PCDEQ Rule 17.24.040 requires a source to provide to the Control Officer all records and documentation needed to determine compliance or noncompliance with a regulation. The purpose of revising MCAQD Rule 100, Section 500 was to add recordkeeping and add/revise emission reporting requirements. EPA's technical support documents (TSDs) have more information about these rules.

II. EPA's Evaluation and Proposed Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). Guidance and policy documents that we use to evaluate enforceability requirements consistently include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).
2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
3. ''Requirements for Preparation, Adoption, and Submittal of Implementation Plans'', U.S. EPA, 40 CFR part 51.
4. State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 57 FR 13498, (April 16, 1992) (''General Preamble'').

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the applicable requirements and guidance regarding enforceability and SIP relaxations. The TSDs have more information on our evaluation.

C. Public Comment and Proposed Action

Because EPA believes the submitted rules fulfill all applicable CAA requirements, we are proposing to fully approve them under section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period or ADEQ does not submit the

proposed rule is changed, EPA will evaluate that subsequent change and may publish another notice of proposed rulemaking. If no significant change is made, EPA will publish a final rulemaking on the rule after responding to any submitted comments. Final rulemaking action by EPA will occur only after the rule has been fully adopted by Arizona and submitted formally to EPA for incorporation into the SIP. See 40 CFR part 51, appendix V.

adopted SIP revisions as expected, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 15, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012–15731 Filed 6–26–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 239

[Docket No. FRA–2011–0062, Notice No. 1; 2130–AC33]

Passenger Train Emergency Preparedness

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA is proposing to revise its regulations for passenger train emergency preparedness. These proposed revisions would: ensure that railroad personnel who communicate and coordinate with first responders during emergency situations receive initial and periodic training and are subject to operational (efficiency) tests and inspections; clarify that railroads must develop procedures in their emergency preparedness plans (e-prep plans) addressing the safe evacuation of passengers with disabilities during emergency situations; limit the need for FRA to formally approve purely administrative changes to approved e-prep plans; specify new operational (efficiency) testing and inspection requirements for both operating and non-operating employees; and remove as unnecessary the section on the preemptive effect of the regulations.

DATES: *Comments:* Written comments must be received by August 27, 2012. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

Hearing: FRA anticipates being able to resolve this rulemaking without a public, oral hearing. However, if FRA receives a specific request for a public, oral hearing prior to July 27, 2012, one will be scheduled and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

ADDRESSES: *Comments:* Comments related to Docket No. FRA–2011–0062, Notice No. 1, may be submitted by any of the following methods:

- *Web site:* The Federal eRulemaking Portal, *www.regulations.gov.* Follow the Web site's online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590.
- *Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140 on the Ground level of the West Building, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name, docket name and docket number or Regulatory Identification Number (RIN) for this rulemaking (2130–AC33). Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or visit the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140 on the Ground level of the West Building, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Daniel Knote, Staff Director, Passenger Rail Division, U.S. Department of Transportation, Federal Railroad Administration, Office of Railroad Safety, Mail Stop 25, West Building 3rd Floor, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202–493–6350); or Brian Roberts, Trial Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, Mail Stop 10, West Building 3rd Floor,

1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202–493–6056).

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I. Executive Summary

FRA is issuing this NPRM to revise FRA's passenger train emergency preparedness regulations. This NPRM is intended to clarify certain requirements and address issues that have arisen since the regulations were issued in May 1998. This NPRM is based on language developed by the General Passenger Safety Task Force (Task Force), a subgroup of the Railroad Safety Advisory Committee (RSAC), to resolve four main issues involving the regulations. The Task Force developed recommendations principally to: (1) Ensure that railroad personnel who communicate and coordinate with first responders during emergency situations receive initial and periodic training and are subject to operational (efficiency) tests and inspections under part 239; (2) clarify that railroads must develop procedures in their e-prep plans addressing the safe evacuation of passengers with disabilities during an emergency situation; (3) limit the need for FRA to formally approve purely administrative changes to approved e-prep plans; and (4) specify new operational (efficiency) testing and inspection requirements for both operating and non-operating employees for railroads covered by part 239. The recommendations developed by the Task Force were approved by the full RSAC, and they form the basis of this NPRM.

Among the NPRM's main proposals, the rule would:

- Clarify the types of railroad personnel who are required to be trained or be subjected to operational (efficiency) testing and inspections under part 239. This would include railroad personnel who directly coordinate with emergency responders;
- Clarify that operational (efficiency) testing under part 239 can be conducted under and considered part of the railroad's efficiency testing program under 49 CFR part 217;
- Allow purely administrative changes to railroad e-prep plans to be excluded from the formal review and approval process required for more substantive amendments to e-prep plans under part 239;
- Clarify that railroads must include procedures in their e-prep plans addressing the safe evacuation of persons with disabilities during emergency situations as well as full-scale simulations of emergency situations; and
- Remove as unnecessary the section on the preemptive effect of the regulations.

In analyzing the economic impacts of this proposed rule, FRA found that proposed regulatory changes would enhance the emergency planning process currently in place in part 239. FRA has quantified the costs associated with this NPRM. Any additional costs associated with amending part 239 would be mostly related to the inclusion of additional personnel in the testing and training programs required by part 239. Railroads would see reduced burdens in the filing and approval process of e-prep plans with non-substantive changes. The industry, however, would be subject to additional burden from minor new requirements for the submission of e-prep plans to make the review and approval of e-prep plans more efficient. Total costs over the next 10 years are estimated to be $1,049,308 (or present value of $734,922 when discounted at 7 percent).

FRA has analyzed the benefits associated with this rule. Benefits would accrue from the increased likelihood that the passenger railroads would handle external communications more efficiently, expediting the arrival of emergency responders to the accident scene, and from the ability of the railroad personnel to minimize health and safety risks through improved internal and external communications. FRA utilized a break-even analysis to quantify the minimum safety benefits necessary for the proposed rule to be cost-effective, considering the estimated quantified costs. The break-even point was found to be a reduction in severity of 3.84 injuries from Abbreviated Injury Scale (AIS) level 2 to AIS level 1. Safety benefits are estimated to total $1,091,200 when four injuries have their severity mitigated from AIS 2 to AIS 1. Total discounted benefits are estimated to be $735,757 (PV 7 percent). The benefits for this proposed rule would exceed the estimated costs when four injuries are prevented from increasing in severity from an AIS 1 to an AIS 2. FRA believes the proposed changes in this rulemaking will more than exceed the break-even estimate.

II. Background

A. 1998 Passenger Train Emergency Preparedness Final Rule

On May 4, 1998, FRA published a final rule on passenger train emergency preparedness that was codified at 49 CFR part 239. *See* 63 FR 24629 (May 4, 1998). The rule addresses passenger train emergencies of various kinds, including security situations, and sets minimum Federal safety standards for the preparation, adoption, and implementation of e-prep plans by railroads connected with the operation of passenger trains. The existing rule requires e-prep plans to include elements such as communication, employee training and qualification, joint operations, tunnel safety, liaison with emergency responders, on-board emergency equipment, and passenger safety information. Under the requirements of the rule, each affected railroad is required to instruct its employees on the applicable provisions of its plan. In addition, the plan adopted by each railroad is subject to formal review and approval by FRA. The rule also requires each railroad operating passenger train service to conduct emergency simulations to determine its capability to execute the e-prep plan under the variety of emergency scenarios that could reasonably be expected to occur.

In promulgating the rule, FRA also established specific requirements for passenger train emergency systems. Among these are requirements that all emergency window exits and windows intended for rescue access by emergency responders be marked accordingly and that instructions be provided for their use. In addition, FRA established requirements that all door exits intended for egress be lighted or marked, all door exits intended for rescue access by emergency responders be marked, and that instructions be provided for their use.

B. 2008 Passenger Train Emergency Systems (PTES I) Final Rule

In 2008, FRA revisited requirements for emergency systems on passenger trains by enhancing existing requirements for emergency window exits and establishing new requirements for rescue access windows used by emergency responders to evacuate passengers. *See* 73 FR 6369 (February 1, 2008). While this final rule did not make any changes to the passenger train emergency preparedness regulations, the rule expanded existing requirements that were previously only applicable to passenger trains operating at speeds in excess of 125 mph but not exceeding 150 mph (Tier II passenger trains) to passenger trains operating at speeds not exceeding 125 mph (Tier I passenger trains), *see* § 238.5. Specifically, Tier I passenger trains were required to be equipped with public address and intercom systems for emergency communication, as well as provide emergency roof access for use by emergency responders. FRA applied certain requirements to both existing and new passenger equipment, while other requirements applied only to new passenger equipment.

C. 2012 Passenger Train Emergency Systems (PTES II) NPRM

On January 3, 2012, FRA published an NPRM proposing to enhance existing requirements as well as create new requirements for passenger train emergency systems. *See* 77 FR 154 (January 3, 2012). The NPRM proposes to add emergency passage requirements for interior vestibule doors as well as enhance emergency egress and rescue access signage requirements. The NPRM also proposes requirements for low-location emergency exit path markings, the creation of minimum emergency lighting standards for existing passenger cars, and enhancements to existing requirements for the survivability of emergency lighting systems in new passenger cars.

Additionally, the NPRM proposes changes to FRA's passenger train emergency preparedness regulations in part 239. These changes include clarifying existing requirements for participation in debriefing and critique sessions following both passenger train emergency situations and full-scale simulations. Under the current regulation, a debriefing and critique session is required after each passenger train emergency situation or full-scale simulation to determine the effectiveness of the railroad's e-prep plan. *See* § 239.105. The railroad is then required to improve or amend its plan, or both, in accordance with the information gathered from the session. Language proposed in the PTES II NPRM clarifies that, to the extent practicable, all on-board personnel, control center personnel, and any other employee involved in the emergency situation or full-scale simulation shall participate in the debriefing and critique session. The proposed rule would also clarify that employees be provided flexibility to participate in the debrief and critique sessions through a variety of different methods.

D. The Need for Revisions to Passenger Train Emergency Preparedness Regulations

Among FRA's reasons for initiating this rulemaking, FRA learned that there was confusion regarding certain requirements within FRA's passenger train emergency preparedness regulations. For example, FRA learned that some passenger railroads were confused as to which types of railroad personnel were required to be trained or be subjected to operational (efficiency) testing and inspections under part 239. These railroads were unclear whether part 239 required certain railroad personnel who directly coordinate with emergency responders and other outside organizations during emergency situations to be trained or be subjected to operational (efficiency) testing and inspections. As a result, FRA believes that it is necessary to clarify the regulatory language in part 239 to ensure that railroad personnel who directly coordinate with emergency responders actually receive the proper training and are subject to operational (efficiency) testing and inspections. FRA also learned that many railroads were unclear whether operational (efficiency) testing under part 239 could be considered for purposes of the railroad's efficiency testing program required under 49 CFR part 217.

In addition, as a result of FRA's experience in reviewing and approving passenger railroads' e-prep plans that are updated periodically, FRA realized that a number of the changes were purely administrative in nature. While part 239 currently subjects all changes to an e-prep plan to a formal review and approval process, FRA believes that such purely administrative changes should be excluded from the process so that the agency can focus its resources on more substantive matters.

Finally, FRA believed it was necessary to clarify part 239 to address the requirements of Executive Order 13347. 69 FR 44573 (July 26, 2004). Executive Order 13347 requires, among other things, that Federal agencies encourage State, local, and tribal governments, private organizations, and individuals to consider in their emergency preparedness planning the unique needs of individuals with disabilities whom they serve. While under part 239 the unique needs of passengers with disabilities must already be considered in the railroads' e-prep plans, the NPRM would clarify the railroads' responsibilities.

E. RSAC Overview

In March 1996, FRA established RSAC as a forum for collaborative rulemaking and program development. RSAC includes representatives from all of the agency's major stakeholder groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of member groups follows:

- American Association of Private Railroad Car Owners (AAPRCO);
- American Association of State Highway and Transportation Officials (AASHTO);
- American Chemistry Council;
- American Petroleum Institute;
- American Public Transportation Association (APTA);
- American Short Line and Regional Railroad Association (ASLRRA);
- American Train Dispatchers Association (ATDA);
- Association of American Railroads (AAR);
- Association of Railway Museums;
- Association of State Rail Safety Managers (ASRSM);
- Brotherhood of Locomotive Engineers and Trainmen (BLET);
- Brotherhood of Maintenance of Way Employees Division (BMWED);
- Brotherhood of Railroad Signalmen (BRS);
- Chlorine Institute;
- Federal Transit Administration (FTA);*
- Fertilizer Institute;
- High Speed Ground Transportation Association;
- Institute of Makers of Explosives;
- International Association of Machinists and Aerospace Workers;
- International Brotherhood of Electrical Workers;
- Labor Council for Latin American Advancement;*
- League of Railway Industry Women;*
- National Association of Railroad Passengers (NARP);
- National Association of Railway Business Women;*
- National Conference of Firemen & Oilers;
- National Railroad Construction and Maintenance Association (NRCMA);

- National Railroad Passenger Corporation (Amtrak);
- National Transportation Safety Board (NTSB);*
- Railway Supply Institute (RSI);
- Safe Travel America (STA);
- Secretaria de Comunicaciones y Transporte;*
- Sheet Metal Workers International Association (SMWIA);
- Tourist Railway Association, Inc.;
- Transport Canada;*
- Transport Workers Union of America (TWU);
- Transportation Communications International Union/BRC (TCIU/BRC);
- Transportation Security Administration (TSA);* and
- United Transportation Union (UTU).

*Indicates associate, non-voting membership.

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The individual task force then provides that information to the working group for consideration. When a working group comes to unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff members play an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation, and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations would be noted and explained in the rulemaking document issued by FRA. However, to the maximum extent practicable, FRA utilizes RSAC to provide consensus recommendations with respect to both proposed and final agency action. If RSAC is unable to reach consensus on a recommendation for action, the task is withdrawn and FRA determines the best course of action.

F. Passenger Safety Working Group

The RSAC established the Passenger Safety Working Group (Working Group) to handle the task of reviewing passenger equipment safety needs and programs and recommending consideration of specific actions that could be useful in advancing the safety of rail passenger service and develop recommendations for the full RSAC to consider. Members of the Working Group, in addition to FRA, include the following:

- AAR, including members from BNSF Railway Company (BNSF), CSX Transportation, Inc. (CSXT), and Union Pacific Railroad Company (UP);
- AAPRCO;
- AASHTO;
- Amtrak;
- APTA, including members from Bombardier, Inc., Herzog Transit Services, Inc., Interfleet Technology, Inc. (Interfleet, formerly LDK Engineering, Inc.), Long Island Rail Road (LIRR), Maryland Transit Administration (MTA), Metro-North Commuter Railroad Company (Metro-North), Northeast Illinois Regional Commuter Railroad Corporation, Southern California Regional Rail Authority (Metrolink), and Southeastern Pennsylvania Transportation Authority (SEPTA);
- ASLRRA;
- BLET;
- BRS;
- FTA;
- NARP;
- NTSB;
- RSI;
- SMWIA;
- STA;
- TCIU/BRC;
- TSA;
- TWU; and
- UTU.

In 2007, the Working Group tasked the Task Force (General Passenger Safety Task Force) to resolve four issues involving FRA's regulations related to passenger train emergency preparedness. The issues taken up by the Task Force were: (1) Ensure that railroad personnel who communicate and coordinate with first responders during emergency situations receive initial and periodic training and are subject to operational (efficiency) tests and inspections under part 239; (2) clarify that railroads must develop procedures in their e-prep plans addressing the safe evacuation of passengers with disabilities during an emergency situation; (3) limit the need for FRA to formally approve purely administrative changes to approved e-prep plans and update FRA headquarters' address; and (4) specify new operational (efficiency) testing and inspection requirements for both operating and non-operating employees for railroads covered by part 239.

While the Task Force was initially charged with updating FRA headquarters' address as it appeared in various regulations found in part 239, FRA has already amended its regulations to update the address of the physical headquarters of FRA and the U.S. Department of Transportation in Washington, DC. *See* 74 FR 25169 (May 27, 2009).

G. General Passenger Safety Task Force

Members of the Task Force include representatives from various organizations that are part of the larger Working Group. Members of the Task Force, in addition to FRA, include the following:

- AAR, including members from BNSF, CSXT, Norfolk Southern Railway Co., and UP;
- AASHTO;
- Amtrak;
- APTA, including members from Alaska Railroad Corporation, Peninsula Corridor Joint Powers Board (Caltrain), LIRR, Massachusetts Bay Commuter Railroad Company, Metro-North, MTA, New Jersey Transit Corporation, New Mexico Rail Runner Express, Port Authority Trans-Hudson, SEPTA, Metrolink, and Utah Transit Authority;
- ASLRRA;
- ATDA;
- BLET;
- FTA;
- NARP;
- NRCMA;
- NTSB;
- Transport Canada; and
- UTU.

The full Task Force met together on the following dates and in the following locations to discuss the four e-prep-related issues charged to the Task Force:

- July 18–19, 2007, in Chicago, IL;
- December 12–13, 2007, in Ft. Lauderdale, FL;
- April 23–24, 2008, in San Diego, CA; and
- December 3, 2008, in Cambridge, MA.

Staff from the Volpe Center attended all of the meetings and contributed to the technical discussions through their comments and presentations. To aid the Task Force in its delegated task, FRA's Office of Chief Counsel drafted regulatory text for discussion purposes. Task Force members made changes to

this draft text. Minutes of each of these Task Force meetings are part of the docket in this proceeding and are available for public inspection. The Task Force reached consensus on all four assigned tasks and adopted the draft text created from its meetings as a recommendation to the Working Group on December 4, 2008.

FRA's Office of Chief Counsel revised the Task Force's recommendation to conform to technical drafting guidelines and to clarify the intent of the recommendation. On June 8, 2009, the Task Force presented both its initial consensus language as well as the consensus language revised by FRA's Office of Chief Counsel to the Working Group. The Working Group approved the Task Force's initial and revised consensus language at its June 8, 2009 meeting in Washington, DC. The consensus language was then presented before the full RSAC on June 25, 2009, where it was approved by unanimous vote. Thus, the Working Group's recommendation was adopted by the full RSAC as a recommendation to FRA.

While RSAC's recommendation has provided a strong basis for this proposed rule, FRA has varied from the recommendation principally in one substantive way: FRA has declined to adopt the RSAC's recommendation to add language to § 239.101(a)(2)(ii) that would require control center and ERCC personnel to receive initial and periodic training only on those portions of the railroad's e-prep plan that relate to their specific duties under the plan. FRA explains this decision, below. FRA has also made minor changes for purposes of clarity and formatting in the **Federal Register**, but these changes are not intended to affect the RSAC's consensus recommendation.

III. Section-by-Section Analysis

Subpart A—General

Section 239.5 Preemptive Effect

FRA is proposing to remove this section on the preemptive effect of the regulations. FRA believes that this section is unnecessary because it is duplicative of statutory law at 49 U.S.C. 20106 and case law, which sufficiently address the preemptive scope of FRA's regulations.

Section 239.7 Definitions

FRA is proposing that this section be amended to add a definition for the new term ''emergency response communications center'' (ERCC) to mean a central location designated by a railroad with responsibility for establishing, coordinating, or maintaining communication with emergency responders, representatives of adjacent modes of transportation, and appropriate railroad officials during a passenger train emergency. The ERCC may be part of the railroad's ''control center.'' The RSAC recommended that such a definition be added to this section, and FRA agrees with the RSAC's recommendation for the reasons stated below.

Currently, the requirements of part 239 do not specifically apply to ERCC personnel but rather to personnel in a control center, *i.e.,* a central location on a railroad with responsibility for directing the safe movement of trains. The individuals working in these train dispatch centers are subject to emergency preparedness plan training and operational (efficiency) tests and inspections. *See* 49 CFR 239.101. However, only requiring control center personnel to receive training on a railroad's emergency preparedness plan may be problematic because in many railroads' operational structures train dispatchers only notify internal railroad officials about an emergency situation and provide block protection for the affected train(s) or equipment involved in the incident. While an ERCC can be part of a railroad's dispatch center, most railroads maintain a separate center within their organizational structure that establishes and maintains communications with emergency first responders, adjacent modes of transportation, and appropriate railroad officials. In addition, ERCCs assist in coordinating the actual emergency response with first responders.

This NPRM proposes to define ERCCs, which provide vital services during an emergency situation, and include the definition in various provisions of part 239 that address training, testing, and inspection requirements. By including this definition in the existing regulation, FRA can expressly require that ERCC personnel, who directly interact with emergency first responders, receive the proper training, testing, and oversight under the regulation to appropriately prepare for and respond to an emergency situation.

The definition of ERCC recommended by the RSAC and that FRA is proposing in this rulemaking provides the railroads with maximum flexibility in designating what centers or groups of individuals within the railroad's organizational structure qualify as ERCCs and are responsible for communicating with the emergency first responders and other outside entities during an emergency situation on the railroad. With this flexibility, each affected railroad can ensure that the correct center or group of individuals within the railroad's organizational structure receives training on the railroad's e-prep plan, and that the center or group of individuals is subject to operational (efficiency) tests and inspections regardless of how the center or group of individuals is organized within the railroad.

Subpart B—Specific Requirements

Section 239.101 Emergency Preparedness Plan

Each railroad subject to the regulation is required to establish an e-prep plan under this section that is designed to safely manage emergencies and minimize subsequent trauma and injury to passengers and on-board personnel. FRA is proposing to revise this section in several different ways. Additional language is being proposed to the following paragraphs of this section: paragraphs (a)(1)(ii), and (a)(2)(ii) through (v). Conversely, this NPRM proposes to remove language from paragraph (a)(2)(ii). Finally, FRA is proposing to create an entire new paragraph (a)(8). Each proposed change to this section is addressed below by paragraph.

Paragraph (a)(1)(ii). As currently written, paragraph (a)(1) requires railroad control center or dispatch personnel to notify outside emergency responders, adjacent rail modes of transportation, and appropriate railroad officials when a passenger train emergency has occurred. However, a number of railroads have found it inefficient to use the control center or railroad dispatcher to perform these duties during an emergency situation because the personnel are likely providing block protection for the incident as well as performing their usual dispatching duties for other parts of the railroad unaffected by the emergency event. Instead, many railroads currently maintain in their organizational structure a separate center or desk within, or even completely separate from, the railroad dispatch center that establishes and maintains communications with internal and external organizations during a railroad emergency. See the discussion in § 239.7, above.

Consequently, FRA is proposing to add specific language to this paragraph that would provide for ERCCs to notify outside emergency responders, adjacent rail modes of transportation, and appropriate railroad officials, when an emergency occurs under the passenger railroad's e-prep plan. Without this proposed language, the regulation would continue to place these responsibilities specifically on control

center personnel working in the railroad dispatch office. Instead, the regulation would now clearly recognize that railroads have the flexibility to decide which part of railroad operations should handle these tasks during an emergency situation.

Paragraph (a)(2)(ii). Similar to the proposed change to paragraph (a)(1)(ii), additional language is being proposed to paragraph (a)(2)(ii) that would require ERCC personnel to receive initial and periodic training on appropriate courses of action for each potential emergency situation. Under this paragraph, initial and periodic training is already required for control center personnel. FRA also proposes adding language to this paragraph clarifying that control center or ERCC personnel can be employees of the railroad, as well as contractors, subcontractors, or employees of a contractor or subcontractor to the railroad. FRA notes that contractors, subcontractors, and employees of a contactor or subcontractor to the railroad are already subject to the requirements of part 239 when performing functions under this part per the requirements of § 239.9. Nonetheless, for clarity FRA is revising the rule text in paragraph (a)(2)(ii) and the text in various other paragraphs of this part to make clear that contractors, subcontractors, and employees of a contractor or subcontractor are indeed covered under the requirements of this part.

FRA notes that RSAC reached consensus on adding language that would require control center and ERCC personnel to receive initial and periodic training only on those portions of the railroad's e-prep plan that relate to their specific duties under the plan. However, FRA believes that adding this language could create safety concerns and therefore declines to propose adding such language to this paragraph in this NPRM. Specifically, FRA is concerned that if individuals receive only initial and periodic training on the very specific parts of the railroad's e-prep plan they are required to perform during an emergency situation, a railroad's entire emergency response could be hindered if specific individuals happen to be absent during an actual emergency situation. For example, if a specific control center or ERCC employee is required under the railroad's e-prep plan to notify internal railroad personnel during an emergency situation that an emergency situation on the railroad has occurred, and that employee is absent or incapacitated during an actual emergency, then the railroad's emergency response may be hindered. By ensuring that control center and ERCC personnel receive broader initial and periodic training on appropriate courses of action on potential emergency situations beyond the individual's specific duties under the railroad's e-prep plan, these individuals will have a more holistic view of the railroad's emergency response and therefore be better prepared to respond to an emergency situation regardless of the specific circumstances.

FRA believes that training control center and ERCC personnel on the railroad's entire e-prep plan, not just the specific portions of the plan that relate to their specific duties, will not add any additional cost to the railroads because the railroads are already providing this broader level of training to their employees. Many railroads provide this holistic training on the railroad's e-prep plan through an informational video, which provides useful information to the employees on all levels of the railroad's emergency response.

FRA also proposes to amend paragraphs (a)(2)(ii)(A) through (D). In paragraph (a)(2)(ii)(A), FRA proposes to remove the word ''dispatch'' before ''territory familiarization.'' The Task Force recommended that the word ''dispatch'' be removed from this subsection so that control center and ERCC personnel who are not railroad dispatchers would not be required to be as familiar with a territory as dispatchers are required to be under current railroad operating rules. For example, to conduct their duties efficiently and safely, railroad dispatchers are required to memorize the physical characteristics of the railroad territory over which they control train movements. While this is necessary for a railroad dispatcher, the Task Force believed, and FRA agrees, that this level of familiarity with railroad territory is not necessary for individuals working in a control center or ERCC who are not railroad dispatchers.

Therefore, FRA proposes that the word ''dispatch'' be struck from paragraph (a)(2)(ii)(A). Individuals working in control centers or ERCCs who are not also railroad dispatchers would not be required to have complete dispatch territory familiarization in their capacity to assist in emergency situations. If the proposed language is adopted, railroads would not have to spend resources training all control center and ERCC personnel who are not railroad dispatchers to be as familiar with the railroad territory in question. Instead, for the purposes of this paragraph, territory familiarization would focus on, but not be limited to: access points for emergency responders along the railroad's right-of-way; special circumstances (e.g., tunnels); parallel operations; and other operating conditions (e.g., elevated structures, bridges, and electrified territory) including areas along the railroad's right-of-way that are remote and known to present challenges for emergency personnel responding to a passenger train emergency.

To complement the proposed language in paragraph (a)(2)(ii)(A), paragraph (a)(2)(ii)(B) would require initial and periodic training for control center and ERCC personnel on their ability to access and retrieve information that would aid emergency personnel in responding to an emergency situation. (Current paragraph (a)(2)(ii)(B) would be redesignated as proposed paragraph (a)(2)(ii)(C), below). Under the proposed regulation, control center and ERCC personnel would be required to receive sufficient training to be able to retrieve information to assist emergency personnel in their emergency response. For example, under a railroad's e-prep plan, a railroad employee designated as part of an ERCC might be required to be trained on how to electronically retrieve a map of railroad property, read it properly, and identify and describe important points of access to emergency responders.

Language is also proposed to be added to paragraph (a)(2)(ii)(C) (redesignated from (a)(2)(ii)(B)). This new proposed language would require control center and ERCC personnel to receive initial and periodic training on the railroad's e-prep plan, including what protocols govern internal communications between these two groups when an actual emergency situation occurs. The language ''as applicable under the plan,'' would also be added to the regulatory text to emphasize that due to the variety of possible organizational designs on how railroads handle emergency responses, it is ultimately each individual railroad's decision on what protocols will be followed to govern internal communication between control center and ERCC personnel.

Finally, a new paragraph (a)(2)(ii)(D) is proposed. This new paragraph reflects the Task Force's recommendation that initial and periodic e-prep plan training should include the protocols for establishing and maintaining external communications between the railroad's control center or ERCC, or both, and emergency responders. The Task Force recommended and FRA agrees that adding this requirement will ensure that control center and ERCC personnel receive initial and periodic training on what protocols need to be followed to

establish and maintain communications with external organizations assisting in the emergency response. The Task Force and FRA believe that it is just as important for control center and ERCC personnel to learn the protocols for establishing and maintaining communications with external organizations as for the protocols governing internal communications between centers being proposed in paragraph (a)(2)(ii)(C).

FRA also realizes that if these proposed changes to part 239's emergency preparedness plan requirements are adopted, then railroads may have to amend their e-prep plans in order to be in compliance with the new requirements. Therefore, FRA intends to provide railroads sufficient time to have their amended e-prep plans submitted to FRA for review after the final rule making these changes is issued. FRA is considering lengthening the effective date of the final rule to do so, and invites comment on this issue.

Paragraph (a)(2)(iii). FRA is proposing to add language to paragraph (a)(2)(iii) that would require ERCC personnel to be included in the initial training after the e-prep plan is approved under § 239.201(b)(1). It is important that ERCC personnel be included in this training because, depending on the organizational structure of the railroad, the actions of ERCC personnel during an emergency response situation may be more pivotal to the successful implementation of the plan than the actions of control center personnel. Language is also proposed to be added to paragraph (a)(2)(iii) so that not only would control center and ERCC personnel who are employed by the railroad be covered by the regulation, but also control center and ERCC personnel who are railroad contractors and subcontractors as well as employees of these contractors and subcontractors. The proposed heading of this paragraph reflects this change as well.

Paragraph (a)(2)(iv). Similar to the proposed language in paragraph (a)(2)(iii), this NPRM proposes to add language to paragraph (a)(2)(iv) to ensure that ERCC personnel hired after the e-prep plan is approved by FRA receive initial training within 90 days after the individual's initial date of service with the railroad. Currently, this paragraph expressly requires that only on-board and control center personnel receive initial training within 90 days after their initial date of service with the railroad. Depending on how a railroad has chosen to organize its response to a specific emergency situation, failure to train a new ERCC employee within 90 days of starting his or her service on the railroad could create inefficiencies in the railroad's response to an emergency situation. Therefore, FRA proposes this modification to ensure that the railroads do not delay in providing training to new ERCC personnel.

In addition, FRA is also proposing to add language to paragraph (a)(2)(iv) clarifying that not only are railroad employees covered by the requirements of this paragraph, but also on-board, control center, and ERCC contractors, subcontractors, and employees of contractors or subcontractors. A change to the heading of paragraph (a)(2)(iv) is also being proposed to reflect the proposed modification of the regulatory text.

Paragraph (a)(2)(v). FRA is proposing to add language to this paragraph to clarify that railroads need to develop testing procedures not only for employees, but also for contractors and subcontractors, as well as employees of contractors and subcontractors who are being evaluated for qualification under the railroad's e-prep plan. The current regulatory text expressly requires railroads to develop testing procedures for railroad employees only. This proposed language, if adopted, would clarify that employees, as well as contractors, subcontractors, and employees of contractors and subcontractors, are required to be evaluated for qualification under the railroad's e-prep plan using appropriate testing procedures. Language is also being proposed to the heading of this paragraph to reflect the proposed change and to clarify that railroads need to develop testing procedures for ERCC personnel as well as on-board and control center personnel.

Finally, paragraph (a)(2)(v)(A) is proposed to be modified to require that testing procedures developed by the railroads accurately measure an individual's, rather than an individual employee's, knowledge of his or her responsibilities under the railroad's e-prep plan. Currently, paragraph (a)(2)(v)(A) expressly applies only to railroad employees, and this modification would ensure that railroad contractors and subcontractor are covered by the provision as well.

Paragraph (a)(8). Executive Order 13347 (''Individuals with Disabilities in Emergency Preparedness'') requires the Federal government to appropriately support safety and security for individuals with disabilities in all types of emergency situations. 69 FR 44573 (July 26, 2004). Currently, each railroad subject to part 239 is required to provide for the safety of each of its passengers in its emergency preparedness planning. Nonetheless, FRA is proposing a new paragraph (a)(8) that would clarify that these railroads must include procedures in their e-prep plans addressing the safe evacuation of persons with disabilities during emergency situations (and full-scale simulations of them). FRA expects the railroads to address the responsibilities of on-board personnel to carry out these specific procedures. For example, if a train has a failure or is involved in an incident and an evacuation is deemed necessary, a crewmember in the body of the train would need to search for and identify those passengers who cannot reasonably be evacuated by stairs or steps.

This new paragraph would not require a railroad to maintain any list of train passengers, whether or not they have a disability. However, the railroad must have in place procedures so that the locations of persons with disabilities on board its trains are generally known to the train crew, and that such persons can be evacuated under all potential conditions that require passenger evacuation, including those conditions identified under the Special Circumstances portion of the railroad's e-prep plan, when applicable, as required by paragraph (a)(4) of this section. In this regard, the railroad must address those situations requiring immediate passenger evacuation with or without the assistance of emergency response personnel or railroad personnel not on board its trains. At the same time, the railroad must have a process for notifying emergency response personnel in an emergency situation about the presence and general location of persons with disabilities when the railroad has knowledge that such passengers are on board a train.

Section 239.105 Debriefing and Critique

This section requires railroads operating passenger train service to conduct debriefing and critique sessions after each passenger train emergency situation or full-scale emergency simulation to determine the effectiveness of the railroad's e-prep plan. FRA is proposing to add language to paragraph (c)(3) of this section so that the debriefing and critique session would be designed to determine whether the ERCC, as well as the control center, promptly initiated the required notifications. In addition, FRA makes clear that the plan's effectiveness in the evacuation of passengers with disabilities must be addressed during debrief and critique sessions.

Subpart C—Review, Approval, and Retention of Emergency Preparedness Plans

Section 239.201 Emergency Preparedness Plan; Filing and Approval

Section 239.201 specifies the process for review and approval by FRA of each passenger railroad's e-prep plan. FRA is proposing to divide paragraph (a) of this section into paragraphs (a)(1) and (a)(2). As proposed, paragraph (a)(1) contains the regulatory requirements on how to file an e-prep plan, while proposed paragraph (a)(2) contains the requirements on how to file an amendment to an FRA-approved plan. Proposed paragraph (a)(2) is then further subdivided. Proposed paragraph (a)(2)(i) describes what procedures a railroad must follow when filing amendments to its e-prep plan with FRA. Conversely, proposed paragraph (a)(2)(ii) lists the limited circumstances in which a railroad could enact an amendment to its approved e-prep plan without first getting FRA approval of the amendment. Finally, FRA is also proposing to add language to paragraph (b)(3) to clarify that FRA will not formally review the limited number of amendments that could be enacted without prior FRA approval as described in proposed paragraph (a)(2)(ii).

Specifically, FRA proposes a few small modifications to paragraph (a)(1). First, FRA is proposing to update the title of the FRA official who receives a railroad's e-prep plan, from Associate Administrator for Safety to Associate Administrator for Railroad Safety/Chief Safety Officer. Additionally, since the time part 239 was enacted, FRA's Office of Safety officially became the Office of Railroad Safety. Therefore, FRA proposes to update the language in proposed paragraph (a)(1) to reflect the name change of this FRA office. The RSAC also recommended modification of the time period new-start passenger railroads have to submit their e-prep plans to FRA before commencing passenger service. Currently, e-prep plans must be submitted by these passenger railroads no less than 45 days prior to commencing passenger operations. Consistent with this recommendation, FRA proposes that such railroads must submit their plans to FRA no less than 60 days prior to commencing passenger operations. This proposed change would provide FRA safety officials more time to review a railroad's e-prep plan, identify any safety concerns, and notify the railroad of any such concerns so that changes to the plan could be made before actual passenger operations commence. FRA notes that the original filing deadline for passenger railroads in operation around the time part 239 went into effect was not more than 180 days after May 4, 1998. For those passenger railroads then in existence and for those passenger railroads that have started-up service since and have already filed and received approval on their plans, the rule would make clear that those plans are timely filed.

FRA also proposes to redesignate as paragraph (a)(2)(i) the regulatory requirement that all amendments to approved e-prep plans be filed with FRA 60 days prior to the effective date of the amendment. One exception to this requirement would be the limited number of e-prep plan amendments that can be enacted without FRA approval, listed in proposed paragraph (a)(2)(ii). These limited types of amendments to railroad e-prep plans would continue to be required to be filed with FRA, but they would become immediately effective and would not require FRA formal approval.

However, under proposed paragraph (a)(2)(i), e-prep plan amendments submitted to FRA that do not qualify for the exception in proposed paragraph (a)(2)(ii) must be submitted with a written summary of what the proposed amendment would change in the approved e-prep plan and, as applicable, a training plan describing how and when current and new employees and contractors would be trained on any amendment. For example, if the amendment would affect how current and new railroad employees and contractors assist emergency responders, then under this paragraph the railroad must also submit a training plan with the amendment stating how and when these employees and contractors would be trained on these changes to the railroad's e-prep plan. As another example, if the railroad wants to identify new access roads to railroad property in its e-prep plan, then a training plan for employees and contractors should be included with the proposed amendment. Having the railroads include a summary with their proposed e-prep plan amendments that are not exempted by proposed paragraph (a)(2)(ii) is necessary because currently railroads have been submitting their entire approved e-prep plans with the amendment changes already incorporated in the plan without identifying to FRA what changes the railroad is specifically seeking to make to its approved e-prep plan. This has delayed FRA's ability to review the railroad's proposed amendment and respond to the railroad within 45 days as specified in paragraph (b)(3)(i). Requiring the railroads to include such summaries will help FRA efficiently review the proposed amendments and respond back to the railroad normally within 45 days; nevertheless, some reviews may take longer.

As previously stated, FRA is proposing a new paragraph (a)(2)(ii) under which qualifying amendments would not be subject to FRA's formal approval process as outlined in paragraph (b)(3)(i). Amendments that add or amend the name, title, address, or telephone number of the e-prep plan's primary contact person would qualify under paragraph (a)(2)(ii). Railroads filing amendments under this paragraph would be permitted to enact the amendment changes upon filing the amendment with FRA's Associate Administrator for Railroad Safety/Chief Safety Officer. Including a summary of the proposed changes caused by the amendment would not be required. All other e-prep plan amendments not covered by paragraph (a)(2)(ii) would be required to be filed in accordance with paragraph (a)(2)(i) and be subject to the formal approval process proposed in paragraph (b)(3)(i). FRA believes that paragraph (a)(2)(ii) is needed in order to limit the need for FRA to formally approve purely administrative changes to previously approved railroad e-prep plans. This new paragraph will allow these specific types of amendments to become effective immediately upon filing with FRA and thereby help to streamline the approval process.

Additional language is also being proposed to paragraph (b)(3) in order to clarify that the limited types of amendments containing only administrative changes described in proposed paragraph (a)(2)(ii) would be exempt from the formal FRA review that is described in this paragraph.

Subpart D—Operational (Efficiency) Tests; Inspection of Records and Recordkeeping

Section 239.301 Operational (Efficiency) Tests and Inspections

Section 239.301 requires railroads to monitor the routine performance of their personnel who have individual responsibilities under the e-prep plan to verify that they can perform the duties required under the plan in a safe and effective manner. FRA is proposing to modify this section in several ways. First, FRA is proposing to add headings to each main paragraph for clarity. Second, FRA proposes to add language to paragraph (a) that clarifies that railroads are required to specify in their e-prep plans the specific intervals they will periodically conduct operational (efficiency) tests and inspections for

individuals with responsibilities under the e-prep plans. Additionally, FRA is proposing to add language to paragraph (a) that will require any ERCC personnel, railroad contractors or subcontractors, or employees of railroad contractors or subcontractors, to be subject to operational (efficiency) tests and inspections. Finally, FRA is proposing to add new paragraphs (a)(1), (a)(1)(i) through (vi), (a)(2), (d), and (e). The specific requirements proposed in each new paragraph are discussed below.

In paragraph (a), FRA is proposing to add the heading, ''Requirement to conduct operational (efficiency) tests and inspections.'' FRA believes that this heading will help the regulated community identify that paragraph (a) of this section specifically addresses operational (efficiency) test and inspection requirements. Additionally, FRA is proposing to add language to paragraph (a) that will require ERCC personnel, railroad contractors or subcontractors, as well as employees of railroad contractors to be subject to the same periodic operational (efficiency) tests and inspections as on-board and control center employees are under the current regulation. Adding this language to the regulation is necessary to ensure that all individuals who assist in the railroad's emergency response are subject to operational (efficiency) tests and inspections. This proposed language is intended to help ensure that railroads are prepared to provide an appropriate response in the event of an emergency situation. FRA is also proposing in paragraph (a)(1) to identify basic elements that must be included in the railroad's written program of operational (efficiency) tests and inspections.

FRA proposes six new paragraphs under paragraph (a)(1). Each new paragraph includes a required element that must be addressed in every railroad's written program of operational (efficiency) tests and inspections. RSAC recommended that FRA adopt these requirements, which were modeled from regulations found in 49 CFR 217.9, Program of operational tests and inspections; recordkeeping. In fact, in several instances, language was directly taken from various provisions of § 217.9—specifically, § 217.9(c)(3) through (5). While part 217 prescribes processes for railroad operating employees only (*e.g.,* train and engine crews), its approach to operational tests and inspections is useful for governing individuals covered by FRA's emergency preparedness requirements in part 239. However, as proposed, not just railroad operating employees but all on-board, control center, and ERCC employees, as well as contractors and sub-contractors in these roles, would be subject to these tests and inspections as applicable under the railroad's e-prep plan. Each of the new proposed paragraphs is discussed below.

For clarification, FRA notes that part 239 operational (efficiency) tests and inspections can also qualify as operational tests under § 217.9 if the employee, contractor or subcontractor being tested is also performing functions that are covered by part 217. Likewise, operational tests conducted under part 217 can also be accredited as operational (efficiency) tests under part 239 as long as the criteria for operational (efficiency) tests and inspections in part 239 are met. For example, passenger train conductors are subject to operational (efficiency) testing under both parts 217 and 239. An operational (efficiency) test of a passenger train conductor that involves the procedures for passenger train emergency preparedness would satisfy requirements under both parts 217 and 239. In contrast, an operational (efficiency) test of a passenger train conductor that involves the procedures for operating derails would satisfy the requirements under part 217 only.

Operational (efficiency) testing under part 239 can be conducted as part of a railroad's efficiency testing program under § 217.9 or in an entirely separate program. However, if adopted, the proposed operational (efficiency) test and inspections requirements for part 239 will have a broader applicability than just to the employees covered by § 217.9, as noted above. For example, these proposed requirements would also cover such individuals as passenger car attendants and ERCC employees, who would not be covered under part 217. Therefore, a railroad that would prefer to conduct its operational (efficiency) testing required by part 239 as part of its efficiency testing program under § 217.9 would need to modify its program to ensure that the additional tests are included and conducted for all of the employees required to be covered under part 239.

As proposed, paragraph (a)(1)(i) will require railroads to provide in their e-prep plans a program of operational (efficiency) tests and inspections for railroad employees, railroad contractors or subcontractors, and employees of railroad contractors and subcontractors addressing the appropriate courses of action in response to various potential emergency situations and the responsibilities for these individuals under the railroad's e-prep plan. For example, they should address how railroad personnel on board a train respond in case a fire occurs. They should also address what each on-board employee's, contractor's, or subcontractor's individual responsibilities are during such an emergency situation. FRA believes that these proposed requirements would help to reduce confusion during an actual emergency situation and ensure that the railroad's on-board staff undergo operational (efficiency) tests and inspections on actions they would be performing during an emergency event. Only railroad employees, railroad contractor and subcontractors, and employees of railroad contractors and subcontractors who are covered by or have responsibilities under the railroad's e-prep plan would be subject to operational (efficiency) tests and inspections from the railroad. Hired or contracted employees working for the railroad who do not have any responsibilities under the railroad's e-prep plan would not have to be subject to operational (efficiency) tests and inspections.

Paragraph (a)(1)(ii) proposes that the railroads describe each type of operational (efficiency) test and inspection required for passenger train emergency preparedness. The description must also specify the means and procedures used to carry out these operational (efficiency) tests and inspections. For example, an operational (efficiency) test intended for an on-board employee may be conducted as a challenge question posed by a supervisor. In this example, the supervisor may ask the employee what his or her responsibilities are for the evacuation of passengers, including passengers with disabilities, in specific circumstances such as a passenger car filling with smoke. In another instance, a supervisor may ask an ERCC employee to identify a special circumstance (e.g., a tunnel or bridge) located in his or her territory and demonstrate how the employee would direct emergency responders to the location during an actual emergency. Overall, operational (efficiency) tests and inspections adopted for passenger train emergency preparedness should cover all affected employees and be comprehensive.

Proposed paragraph (a)(1)(iii) will require the railroads to state in their e-prep plans the purpose of each type of operational (efficiency) test and inspection conducted. For example, an operational (efficiency) test intended for on-board employees may be conducted to determine if the employees are familiar with passenger evacuation procedures. As another example, such tests intended for ERCC employees may

be conducted to determine if the ERCC employees are familiar with special circumstances on their territory and if they know how to direct emergency responders to these locations. In particular, conducting operational (efficiency) tests on ERCC employees to determine their knowledge of the railroad's e-prep plan, special circumstances, and access points would be necessary to ensure that they are familiar with emergency procedures and capable of directing emergency responders to a passenger train in the event of an emergency.

FRA is also proposing to add new paragraph (a)(1)(iv), which will clarify that each railroad must specify in its operational testing program the specific intervals at which it will periodically conduct operational (efficiency) tests and inspections for individuals covered by paragraph (a). This information should be listed according to operating division where applicable. FRA believes that this additional language is necessary after reviewing e-prep plans submitted by various railroads to FRA. In reviewing railroad e-prep plans, FRA discovered that some railroads would simply state in their plans that they would periodically conduct operational (efficiency) tests and inspections without specifying by what specific interval these tests or inspections would be administered. In some instances, railroads simply copied the language directly from § 239.301(a) and placed it into their e-prep plans.

By adding this proposed language, FRA is not mandating any specific interval by which the railroad should conduct these tests and inspections. FRA believes that the regulated community should have the flexibility to decide when individuals covered by paragraph (a) should be periodically subject to these tests and inspections based on the individual circumstances of each railroad and its e-prep plan and operational testing program. The proposed language will not affect the railroad's current ability to determine how often these periodic tests and inspections should occur. However, FRA will require the railroad to provide more information to the agency so that FRA can better verify that these types of tests and inspections are in fact occurring as planned, and that the railroads are properly carrying out their responsibilities in preparing to deal with various emergency situations.

Proposed paragraph (a)(1)(v) will require the railroad to identify in its e-prep plan each officer by name, job title, and division or system, who is responsible for ensuring that the program of operational (efficiency) tests and inspections is properly implemented. Therefore, for each railroad division or system there should be a separate contact person listed within the e-prep plan who is responsible for implementing the details of the plan on that specific division or system during an emergency situation. In addition, for railroads that have multiple divisions, the proposed regulation would require the railroad to identify at least one officer at the railroad's system headquarters who is responsible for overseeing the entire railroad's program and the e-prep plan implementation. This individual should be knowledgeable about the current state of the railroad's operational (efficiency) test and inspection requirements as well as the current state of the railroad's e-prep program system-wide.

The final proposal, in paragraph (a)(1)(vi), would require that railroad officers conducting operational (efficiency) tests and inspections be trained on the elements of the railroad's e-prep plan that are relevant to the tests and inspections that the officers will be conducting. In addition, the railroad officers conducting the operational (efficiency) tests and inspections must be qualified on the procedures for administering such tests and inspections in accordance with the railroads written program.

FRA also proposes to add headings to both paragraphs (b) and (c) of this section. FRA believes that adding the heading ''Keeping records of operational (efficiency) test and inspection records'' to paragraph (b) will help clarify that paragraph (b) addresses what types of written records need to be created and retained after the performance of an operational (efficiency) test or inspection. Similarly, the heading ''Retention of operational (efficiency) test and inspection records'' is proposed to be added to paragraph (c). This proposed heading will clarify that paragraph (c) addresses the requirements for how long records of operational (efficiency) tests and inspections need to be retained by the railroad. FRA believes that these proposed headings will be useful guides for the regulated community, especially those who are unfamiliar with part 239 and its requirements.

Proposed paragraph (d) contains a new requirement that each railroad retain one copy of its current operational (efficiency) testing and inspection program required by paragraph (a) of this section and each subsequent amendment to the program. If this proposed requirement is adopted, railroads will be required to retain a copy of the current program and any subsequent amendment to the program at the railroad's system headquarters and at each divisional headquarters for three calendar years after the end of the calendar year to which the program relates. The records must also be made available for inspection and copying during normal business hours by representatives of FRA and States participating under 49 CFR part 212.

Finally, FRA is proposing to add a new paragraph (e) to this section. As recommended by RSAC, this proposed paragraph will require each railroad subject to this part to retain a written annual summary of the number, type and result of each operational (efficiency) test and inspection that was conducted in the previous year as required by paragraph (a) of this section. When applicable, these summaries describing the railroad's operational (efficiency) tests and inspections would be required to be organized by operating division. These summaries are intended to provide FRA with a clearer understanding of how operational (efficiency) tests and inspections are being applied and how successful these programs are over different railroad divisions. Annual summaries would be required to be completed and in the possession of the railroad's division and system headquarters by March 1 of the year following the year covered by the summary.

In addition, the annual summary will be required to be retained by the railroad for three calendar years after the end of the calendar year covered by the summary. For example, a railroad's 2013 annual summary of operational (efficiency) tests and inspections would be required to be retained through calendar year 2016. Annual summaries would be required to be made available for inspection and copying during normal business hours by representatives of FRA and States participating under 49 CFR part 212.

FRA specifically invites comment on the appropriateness of proposed paragraph (e). Given that the intended purpose of the proposal is to provide FRA with a clear understanding of how operational (efficiency) tests and inspections are being applied and how successful these programs are being implemented from a systems perspective, FRA invites comment whether the periodic review and analysis requirements of § 217.9(e) should be adopted in the final rule to more appropriately fulfill the intended purpose. Indeed, under § 217.9(e), railroads should already be reviewing and analyzing operational (efficiency) test and inspection data conducted for

passenger train emergency preparedness on individuals subject to part 217; the requirements of the paragraph could then be broadened to cover individuals subject to part 239. FRA also believes that a railroad could consolidate such a review and analysis required by part 239 with one required under § 217.9(e), and that they could be retained for a period of one year after the end of the calendar year to which they relate and be made available to representatives of FRA and States participating under 49 CFR part 212.

IV. Regulatory Impact and Notices

A. Executive Order 12866s and 13563 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures under both Executive Orders 12866 and 13563 and DOT policies and procedures. *See* 44 FR 11034; February 26, 1979. FRA has prepared and placed in the docket (FRA–2011–0062, Notice No. 1) a regulatory impact analysis addressing the economic impact of this proposed rule.

As part of the regulatory impact analysis, FRA has assessed quantitative measurements of the cost streams expected to result from the implementation of this proposed rule. For the 10-year period analyzed, the estimated quantified cost that would be imposed on industry totals $1,049,308 with a present value (PV, 7 percent) of $734,922. The largest burdens that would be expected to be imposed are from the new requirements related to the operational (efficiency) tests in § 239.301 of the proposed regulation. The table below presents the estimated discounted costs associated with the proposed rulemaking.

10-YEAR ESTIMATED COSTS OF PROPOSED RULE

	Present value (7-percent)
Emergency Preparedness Plan (§ 239.101)	$219,833
Debriefing and Critique (§ 239.105)	200,273
Emergency Preparedness Plan; Filing and Approval (§ 239.201)	12,006
Operational (efficiency) Tests (§ 239.301)	302,810
Total Costs	734,922

As part of the regulatory impact analysis, FRA has explained what the likely benefits for this proposed rule would be, and provided numerical assessments of the potential value of such benefits. The proposed regulation would generate safety benefits by preventing injuries in passenger rail accidents from becoming more severe. FRA uses the Abbreviated Injury Scale (AIS) as a measure of the severity for injuries with an AIS 1 injury being defined as minor and an AIS 5 as the most severe, i.e., critical.[1] As noted in Appendix A of the regulatory impact analysis an AIS 1 would be an injury that is minor and may not require professional medical treatment. An AIS 2 injury would be an injury that always requires treatment but is not ordinarily life-threatening. Benefits would accrue from the increased likelihood that the passenger railroads would handle external communications more efficiently, expediting the arrival of emergency responders to accident scenes, and from the ability of the railroad personnel to minimize health and safety risks through improved internal and external communications. This proposed regulation would allow for more flexibility in passenger train emergency preparedness planning and implementation and provides for necessary emergency preparedness training.

Additionally, the NPRM would allow passenger railroads to adjust to future personnel reorganizations and to incorporate technological innovations by affording the railroad's management flexibility in determining which part of the organization to designate as the ERCC.

Given the nature of the proposed regulatory change, FRA believes that the ideal methodology to estimate the safety benefits is a break-even analysis. A break-even analysis quantifies what minimum safety benefits are necessary for the proposed rule to be cost-effective, considering the estimated quantified costs. For this proposed rule, this analysis estimates that the break-even point is met when 3.84 injuries are prevented from increasing in severity from AIS 1 to AIS 2.

The table below presents the estimated benefits necessary for this proposed rule to break-even with the estimated costs. For the 10-year period analyzed the safety benefits would total $1,049,308 with a present value (PV, 7 percent) of $735,757.

10-YEAR ESTIMATED BENEFITS OF PROPOSED RULE

	Limitation of injury severity	Monetary benefits
Break-even point (not discounted)	3.84 less severe injuries	$1,049,308
Discounted benefits (PV 7 percent)	3.84 less severe injuries	735,757

[1] Association for the Advancement of Automotive Medicine. *http://www.aaam1.org/ais/#.*

The benefits for this proposed rule would exceed the estimated costs when 4 injuries are prevented from increasing in severity from an AIS 1 to an AIS 2. FRA believes the proposed changes in this rulemaking will more than exceed the break-even estimate.

B. Regulatory Flexibility Act and Executive Order 13272; Initial Regulatory Flexibility Assessment

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) and Executive Order 13272 (67 FR 53461; August 16, 2002) require agency review of proposed and final rules to assess their impact on small entities. An agency must prepare an initial regulatory flexibility analysis (IRFA) unless it can determine and certify that a rule, if promulgated, would not have a significant impact on a substantial number of small entities. FRA has not determined whether this proposed rule would have a significant impact on a substantial number of small entities. Therefore, FRA is publishing this IRFA to aid the public in commenting on the potential small business impacts of the requirements in this NPRM. FRA invites all interested parties to submit data and information regarding the potential economic impact on small entities that would result from adoption of the proposals in this NPRM. FRA will consider all comments received in the public comment process when making a final determination.

The proposed rule would apply to all passenger railroads (commuter and intercity) and railroads that host passenger rail operations. Based on information currently available, FRA estimates that less than 2 percent of the total costs associated with implementing the proposed rule would be borne by small entities. Based on very conservative assumptions, FRA estimates that the total non-discounted cost for the proposed rule would be approximately $1 million for the railroad industry. There are two passenger railroads that would be considered small for purposes of this analysis and together they comprise less than 5 percent of the railroads impacted directly by this proposed regulation. Both of these railroads would have to make some investment to meet the proposed requirements. Thus, a substantial number of small entities in this sector may be impacted by this proposed rule. These small railroads carry out smaller operations than the average passenger railroad, allowing them to meet the proposed requirements at lower overall costs. Thus, although a substantial number of small entities in this sector would likely be impacted, the economic impact on them would likely not be significant.

In order to get a better understanding of the total costs for the railroad industry, which forms the basis for the estimates in this IRFA, or more cost detail on any specific requirement, please see the Regulatory Impact Analysis (RIA) that FRA has placed in the docket for this rulemaking.

In accordance with the Regulatory Flexibility Act, an IRFA must contain:

- A description of the reasons why the action by the agency is being considered.
- A succinct statement of the objectives of, and legal basis for, the proposed rule.
- A description—and, where feasible, an estimate of the number—of small entities to which the proposed rule would apply.
- A description of the projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that would be subject to the requirements and the types of professional skills necessary for preparation of the report or record.
- An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

1. Reasons for Considering Agency Action

FRA initiated this rulemaking through RSAC in part upon learning that in the regulated community there was some confusion regarding existing requirements on passenger train emergency preparedness (49 CFR part 239). As a result, the General Passenger Safety Task Force (Task Force), a subgroup of the RSAC, was tasked to resolve these issues. The Task Force found that as currently written, part 239 expressly requires only the railroad's control center employees to be subject to training and operational (efficiency) tests and inspections. However, in many instances, control center employees were not found to be the primary points of contact for emergency first responders during a passenger train emergency. Instead, they were carrying out other important duties, such as providing block protection and diverting trains to other parts of the railroad's network. The proposed language in this NPRM would ensure that all personnel involved in emergency preparedness under part 239 are subject to appropriate training as well as operational (efficiency) tests and inspections. At the same time, the NPRM would relieve personnel not involved in emergency preparedness from such requirements. While, the proposed regulation differs slightly from the consensus language, the need for this NPRM is backed by the RSAC and would improve passenger train emergency preparedness by clarifying training and testing requirements.

In addition, as a result of FRA's experience in the periodic review and approval of passenger railroads' e-prep plans, FRA realized that a number of the changes submitted were purely administrative in nature. While part 239 currently subjects all changes to an e-prep plan to a formal review and approval process, FRA believes that purely administrative changes should be excluded from the formal approval process so that the agency can focus its resources on more substantive matters. Accordingly, this NPRM would streamline the approval of e-prep plans.

Further, Executive Order 13347 (''Individuals with Disabilities in Emergency Preparedness'') requires the Federal government to appropriately support safety and security for individuals with disabilities in all types of emergency situations. 69 FR 44573; July 26, 2004. Currently, each railroad subject to part 239 is required to provide for the safety of each of its passengers in its emergency preparedness planning. Nonetheless, FRA is proposing to clarify that these railroads must include procedures in their e-prep plans addressing the safe evacuation of persons with disabilities during emergency situations (and full-scale simulations of them).

2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The purpose of this rulemaking is to further Federal safety standards on passenger train emergency preparedness currently in place in part 239. As a result of the proposed regulation, passenger railroads would have more flexibility to carry out the requirements of part 239 and keep their plans current. The NPRM would permit multiple parts of the organization to be involved in the emergency preparedness process to maintain resiliency while helping to clarify the role of various parts of the structure in an emergency situation. Additionally, the NPRM would provide flexibility to adjust to future personnel reorganizations and to incorporate technological innovations by allowing the railroad's management to determine what part of the organization is designated to be the ERCC.

Among FRA's reasons for initiating this rulemaking was that some confusion arose regarding certain requirements of FRA's passenger train

emergency preparedness regulations. For example, FRA learned that some passenger railroads were confused as to which types of railroad personnel were required to be trained or be subjected to operational (efficiency) testing and inspections under part 239. These railroads were unclear whether part 239 required certain railroad personnel who directly coordinate with emergency responders and other outside organizations during emergency situations to be trained or be subjected to operational (efficiency) testing and inspections. As a result, FRA believes that it is necessary to clarify the regulatory language in part 239 to ensure that railroad personnel who directly coordinate with emergency responders actually receive the proper training and are subject to operational (efficiency) testing and inspections. FRA also learned that many railroads were unclear whether operational (efficiency) testing under part 239 could be considered for purposes of the railroad's efficiency testing program required under 49 CFR part 217.

Finally, FRA believed it was necessary to clarify part 239 to address the requirements of Executive Order 13347. Executive Order 13347 requires, among other things, that Federal agencies encourage State, local, and tribal governments, private organizations, and individuals to consider in their emergency preparedness planning the unique needs of individuals with disabilities whom they serve. While under part 239 the unique needs of passengers with disabilities must already be considered in the railroads' e-prep plans, the NPRM would clarify the railroads' responsibilities.

In order to further FRA's ability to respond effectively to contemporary safety problems and hazards as they arise in the railroad industry, Congress enacted the Federal Railroad Safety Act of 1970 (Safety Act) (formerly 45 U.S.C. 421, 431 et seq., now found primarily in chapter 201 of title 49). (Until July 5, 1994, the Federal railroad safety statutes existed as separate acts found primarily in title 45 of the United States Code. On that date, all of the acts were repealed, and their provisions were recodified into title 49 of the United States Code.) The Safety Act grants the Secretary of Transportation rulemaking authority over all areas of railroad safety (49 U.S.C. 20103(a)) and confers all powers necessary to detect and penalize violations of any rail safety law. This authority was subsequently delegated to the FRA Administrator (49 CFR 1.49). Accordingly, FRA is using this authority to initiate a rulemaking that would clarify and revise FRA's regulations for passenger train emergency preparedness. These standards are codified in Part 239, which was originally issued in May 1999 as part of FRA's implementation of rail passenger safety regulations required by Section 215 of the Federal Railroad Safety Authorization Act of 1994, Public Law 103–440, 108 Stat. 4619, 4623–4624 (November 2, 1994). Section 215 of this Act has been codified at 49 U.S.C. 20133.

3. A Description of, and Where Feasible, an Estimate of Small Entities to Which the Proposed Rule Would Apply

The ''universe'' of the entities to be considered generally includes only those small entities that are reasonably expected to be directly regulated by this action. This proposed rule would directly affect commuter and intercity passenger railroads, and freight railroads hosting passenger rail operations.

''Small entity'' is defined in 5 U.S.C. 601. Section 601(3) defines a ''small entity'' as having the same meaning as ''small business concern'' under Section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) likewise includes within the definition of ''small entities'' not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operation. The U.S. Small Business Administration (SBA) stipulates in its size standards that the largest a railroad business firm that is ''for profit'' may be and still be classified as a ''small entity'' is 1,500 employees for ''Line Haul Operating Railroads'' and 500 employees for ''Switching and Terminal Establishments.'' Additionally, 5 U.S.C. 601(5) defines as ''small entities'' governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority FRA has published a final statement of agency policy that formally establishes ''small entities'' or ''small businesses'' as being railroads, contractors and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. See 68 FR 24891, May 9, 2003, codified at appendix C to 49 CFR part 209. The $20-million limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. FRA is proposing to use this definition for this rulemaking. Any comments received pertinent to its use will be addressed in the final rule.

Railroads

There are only two intercity passenger railroads, Amtrak and the Alaska Railroad. Neither can be considered a small entity. Amtrak is a Class I railroad and the Alaska Railroad is a Class II railroad. The Alaska Railroad is owned by the State of Alaska, which has a population well in excess of 50,000.

There are 28 commuter or other short-haul passenger railroad operations in the U.S. Most of these railroads are part of larger transit organizations that receive Federal funds and serve major metropolitan areas with populations greater than 50,000. However, two of these railroads do not fall in this category and are considered small entities. The impact of the proposed regulation on these two railroads is discussed in the following section.

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Class of Small Entities That Will Be Subject to the Requirements and the Type of Professional Skill Necessary for Preparation of the Report or Record

For a thorough presentation of cost estimates, please refer to the RIA, which has been placed in the docket for this rulemaking. FRA also notes that this proposed rule was developed in consultation with an RSAC working group and task force that included representatives from the Association of American Railroads, freight railroads, Amtrak, and individual commuter railroads.

FRA is aware of two passenger railroads that qualify as small entities: Saratoga & North Creek Railway (SNC), and the Hawkeye Express, which is operated by the Iowa Northern Railway Company (IANR). All other passenger railroad operations in the United States are part of larger governmental entities whose service jurisdictions exceed 50,000 in population.

In 2010 Hawkeye Express transported approximately 5,000 passengers per game over a 7-mile round-trip distance to and from University of Iowa

(University) football games. IANR has approximately 100 employees and is primarily a freight operation totaling 184,385 freight train miles in 2010. The service is on a contractual arrangement with the University, a State of Iowa institution. (The population of Iowa City, Iowa is approximately 69,000.) Iowa Northern, which is a Class III railroad, owns and operates the 6 bi-level passenger cars used for this passenger operation which runs on average 7 days over a calendar year. FRA expects that any costs imposed on the railroad by this regulation will likely be passed on to the University as part of the transportation cost, and requests comment on this assumption.

The SNC began operation in the summer of 2011 and currently provides daily rail service over a 57-mile line between Saratoga Springs and North Creek, New York. The SNC, a Class III railroad, is a limited liability company, wholly owned by San Luis & Rio Grande Railroad (SLRG). SLRG is a Class III rail carrier and a subsidiary of Permian Basin Railways, Inc. (Permian), which in turn is owned by Iowa Pacific Holdings, LLC (IPH). The SNC primarily transports visitors to Saratoga Springs, tourists seeking to sightsee along the Hudson River, and travelers connecting to and from Amtrak service. The railroad operates year round, with standard coach passenger trains. Additional service activity includes seasonal ski trains, and specials such as ''Thomas The Train.'' This railroad operates under a five-year contract with the local government, and is restarting freight operations as well. The railroad has about 25 employees.

FRA believes that these two entities would not be impacted significantly. While, each of these entities would most likely have to file a new e-prep plan, FRA does not expect they would have to change how each railroad reacts to an emergency situation due to including ERCCs under part 239's requirements. Their operating structure is small and it is probable that employees with e-prep duties would continue to have the same emergency responsibilities. FRA expects that both railroads would see additional burden from inclusion of other provisions of the proposed regulation related to recordkeeping, and other training and testing requirements. This NPRM would not be a significant financial impact on these railroad and their operations. They could expect the total regulatory costs for this proposed rule, if it is adopted, to be less than $6,500 for each of the railroads over the next 10 years. The Hawkeye Express and the SNC currently have e-prep plans that have been reviewed and approved by the FRA. Although this NPRM would change several requirements in part 239, professional skills necessary for compliance with existing and new requirements would be the same. FRA believes that both entities have the professional knowledge to fulfill the requirements in the proposed rulemaking.

In conclusion, FRA believes that there are two small entities and that both could be impacted. Thus, a substantial number of small entities could be impacted by the proposed regulation. However, FRA has found that these entities that are directly burdened by the regulation would not be impacted significantly. FRA believes that the costs associated with the proposed rule are reasonable and would not cause any significant financial impact on their operations.

Market and Competition Considerations

The small railroad segment of the passenger railroad industry essentially faces no intra-modal competition. The two railroads under consideration would only be competing with individual automobile traffic and serve in large part as a service offering to get drivers out of their automobiles and off congested roadways. One of the two entities provides service at a sporting event to assist attendees to travel to the stadium from distant parking areas. The other entity provides passenger train service to tourist and other destinations. FRA is not aware of any bus service that currently exists that directly competes with either of these railroads. FRA requests comments and input on current or planned future existence of any such service or competition.

The railroad industry has several significant barriers to entry, such as the need to own the right-of-way and the high capital expenditure needed to purchase a fleet, track, and equipment. As such, small railroads usually have monopolies over the small and segmented markets in which they operate. Thus, while this rule may have an economic impact on all passenger railroads, it should not have an impact on the intra-modal competitive position of small railroads.

5. An Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

FRA is aware that some railroads are unclear whether operational (efficiency) testing under part 239 could be considered for purposes of the railroad's efficiency testing program required under 49 CFR part 217. In the NPRM, FRA clarifies that part 239 operational (efficiency) tests and inspections can also qualify as operational tests under § 217.9 if the employee, contractor, or subcontractor being tested is also performing functions that are covered by part 217. Likewise, operational tests conducted under part 217 can also be accredited as operational (efficiency) tests under part 239 as long as the criteria for operational (efficiency) tests and inspections in part 239 are met.

FRA invites all interested parties to submit data and information regarding the potential economic impact that would result from adoption of the proposals in this NPRM. FRA will consider all comments received in the public comment process when making a determination.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule are being submitted for approval to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The sections that contain the current and new or revised information collection requirements and the estimated time to fulfill each requirement is as follows:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
239.13—Waiver Petitions (*Current requirement*)	45 railroads	1 petition	20 hours	20
239.107—Marking of Emergency Exits (*Current requirements*).				
—Marking of windows and door exits intended for emergency egress.	45 railroads	4,575 decals, 1,950 decals.	10 minutes/5 minutes	706
—Marking of window and door exit intended for emergency access by emergency responders.	45 railroads	6,320 decals, 1,300 decals.	5 minutes/10 minutes	744

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Records of inspection, maintenance, and repair.	45 railroads	1,800 tests/records + 1,200 tests/records.	20 minutes	1,000
239.101/201/203—Emergency Preparedness Plans (*Revised requirements*).				
—1st Year—Amended plans	45 railroads	45 plans	20.33 hours	915
—Subsequent years—amended plans—substantive changes.	45 railroads	9 plans	20.33 hours	183
—Subsequent years—amended plans—non-substantive changes.	45 railroads	4 plans	60 minutes	4
—New RRs—e-prep plans	2 railroads	2 plans	80 hours	160
—Current employee initial training for train crews, control center & emergency response communications members.	45 railroads	540 trained employees	60 minutes	540
—Employee periodic training	45 railroads	27 trained employees	4 hours	108
—Initial training of New Employees	45 railroads	110 trained employees	60 minutes	110
239.101(a)(1)(ii) 3—Designation of RR employee to maintain current emergency telephone numbers to notify outside responders, etc. (*Current requirement*).	45 railroads	45 designations	5 minutes	4
239.101(a)(1)(ii) 3—Railroads' list/record of emergency telephone numbers to notify outside responders, etc. (*Current requirement*).	45 railroads	2 updated lists	1 hour	2
239.101(a)(3)—Emergency Preparedness Plan—Joint Operation (*Current requirement*).	45 railroads	1 plan	16 hours	16
239.101(a)(5)—RR Training Program for on-line emergency responders (*Current requirement*).	45 railroads	45 updated plans	40 hours	1,800
239.101(a)(7)—Passenger Safety Information—Posting emergency instructions inside all passenger cars (*Current requirement*).	2 new railroads	1,300 cards/2 programs/2 safety messages + 2 programs/2 safety messages.	5 minutes/16 hours/48 hours/8 hours/24 hours.	300
239.105(a)(3)—Debriefing and Critique—Sessions conducted after passenger emergency situation or full scale simulation (*Current requirement*).	45 railroads	79 sessions	27 hours	2,133
239.301(a)—Operational Efficiency Tests (*Current requirements*)—RR Tests/inspections of on-board, control center, and emergency response communications center employees.	45 railroads	25,000 tests/inspections	15 minutes	6,250
(b)(c)—Records of operational (efficiency) tests/inspections.	45 railroads	25,000 records	2 minutes	833
(d)—Records of written program of operational (efficiency) tests (*New Requirement*).	45 railroads	90 records	3 minutes	5
(e) Annual summary of operational (efficiency) test/inspections and copy of written summary at system and division headquarters.	45 railroads	45 annual summaries + 30 copies.	5 minutes + 1 minute	5

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Office of Railroad Safety, Information Clearance Officer, at 202–493–6292, or Ms. Kimberly Toone, Office of Information Technology, at 202–493–6139.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via email to Mr. Brogan or Ms. Toone at the following address: *Robert.Brogan@dot.gov; Kimberly.Toone@dot.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This proposed rule will not have a substantial effect on the States or their political subdivisions, and it will not affect the relationships between the Federal government and the States or their political subdivisions, or the distribution of power and responsibilities among the various levels of government. In addition, FRA has determined that this regulatory action will not impose substantial direct compliance costs on the States or their political subdivisions. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, this proposed rule could have preemptive effect by operation of law under certain provisions of the Federal railroad safety statutes, specifically the former Federal Railroad Safety Act of 1970, repealed and recodified at 49 U.S.C. 20106. Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the ''essentially local safety or security hazard'' exception to section 20106.

In sum, FRA has determined that this proposed rule has no federalism implications, other than the possible preemption of State laws under Federal railroad safety statutes, specifically 49 U.S.C. 20106. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this proposed rule is not required.

E. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39, 19 U.S.C. 2501 et seq.) prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

FRA has assessed the potential effect of this rulemaking on foreign commerce and believes that its requirements are consistent with the Trade Agreements Act. The requirements are safety standards, which, as noted, are not considered unnecessary obstacles to trade. Moreover, FRA has sought, to the extent practicable, to state the requirements in terms of the performance desired, rather than in more narrow terms restricted to a particular design or system.

F. Environmental Impact

FRA has evaluated this rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this proposed rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. *See* 64 FR 28547 (May 26, 1999).

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this proposed rule is not a major Federal action significantly affecting the quality of the human environment.

G. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. This proposed rule will not result in the expenditure, in the aggregate, of $100,000,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

H. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' *See* 66 FR 28355, May 22, 2001. Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

FRA has evaluated this proposed rule in accordance with Executive Order 13211. FRA has determined that this proposed rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of the Executive Order.

I. Privacy Act

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Please visit *http://www.regulations.gov/#!privacyNotice.* You may also review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://www.dot.gov/privacy.html.*

List of Subjects in 49 CFR Part 239

Passenger train emergency preparedness, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend part 239 of chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

PART 239—[AMENDED]

Subpart A—General

§ 239.5 [Removed and Reserved]

1. Section 239.5 is removed and reserved.

2. Section 239.7 is amended by adding the definition of ''Emergency response communications center'' to read as follows:

§ 239.7 Definitions.

* * * * *

Emergency response communications center means a central location designated by a railroad with responsibility for establishing, coordinating, or maintaining communication with emergency responders, representatives of adjacent modes of transportation, and appropriate railroad officials during a passenger train emergency. The emergency response communications center may be part of the control center.

* * * * *

Subpart B—Specific Requirements

3. Section 239.101 is amended by revising paragraphs (a)(1)(ii) and (a)(2)(ii), (a)(2)(iii) introductory text, (a)(2)(iv), (a)(2)(v) introductory text, and (a)(2)(v)(A), and by adding paragraph (a)(8) to read as follows:

§ 239.101 Emergency preparedness plan.

(a) * * *

(1) * * *

(ii) *Notification by control center or emergency response communications center.* The control center or the emergency response communications center, as applicable under the plan, shall promptly notify outside emergency responders, adjacent rail modes of transportation, and appropriate railroad officials that a passenger train emergency has occurred. Each railroad shall designate an employee responsible for maintaining current emergency telephone numbers for use in making such notifications.

(2) * * *

(ii) *Control center and emergency response communications center personnel.* The railroad's emergency preparedness plan shall require initial training of responsible control center personnel and any emergency response communications center personnel employed by the railroad, under a contract or subcontract with the railroad, or employed by a contractor or subcontractor to the railroad, as well as periodic training at least once every two calendar years thereafter, on appropriate courses of action for each potential emergency situation under the plan. At a minimum, the initial and periodic training shall include:

(A) Territory familiarization;

(B) Procedures to retrieve and communicate information to aid emergency personnel in responding to an emergency situation;

(C) Protocols governing internal communications between appropriate control center and emergency response communications center personnel whenever an imminent potential or actual emergency situation exists, as applicable under the plan; and

(D) Protocols for establishing and maintaining external communications between the railroad's control center or emergency response communications center, or both, and emergency responders and adjacent modes of transportation, as applicable under the plan.

(iii) *Initial training schedule for current employees of the railroad, current employees of contractors and subcontractors to the railroad, and individuals who are contracted or subcontracted by the railroad.* The railroad's emergency preparedness plan shall provide for the completion of initial training of all on-board and control center employees, and any emergency response communications center personnel, who are employed by the railroad, under a contract or subcontract with the railroad, or employed by a contractor or subcontractor to the railroad on the date that the plan is conditionally approved under § 239.201(b)(1), in accordance with the following schedule:

* * * * *

(iv) *Initial training schedule for new railroad employees, contractor and subcontractor employees, and contracted individuals.* The railroad's emergency preparedness plan shall provide for the completion of initial training of all on-board and control center personnel, as well as any emergency response communications center personnel, who are hired by the railroad, contracted or subcontracted by the railroad, or hired by the contractor or subcontractor to the railroad after the date on which the plan is conditionally approved under § 239.201(b)(1). Each individual shall receive initial training within 90 days after the individual's initial date of service.

(v) *Testing of on-board, control center, and emergency response communications center railroad employees, contractor or subcontractor employees, and contracted individuals.* The railroad shall have procedures for testing a person being evaluated for qualification under the emergency preparedness plan who is employed by the railroad, under a contract or subcontract with the railroad, or employed by a contractor or subcontractor to the railroad. The types of testing selected by the railroad shall be:

(A) Designed to accurately measure an individual's knowledge of his or her responsibilities under the plan;

* * * * *

(8) *Procedures regarding passengers with disabilities.* The railroad shall have procedures in place to promote the safe evacuation of passengers with disabilities under all conditions identified in its emergency preparedness plan. These procedures shall include, but not be limited to, a process for notifying emergency responders in an emergency situation about the presence and general location of each such passenger when the railroad has knowledge that the passenger is on board the train. This paragraph does not require the railroad to maintain any list of train passengers.

* * * * *

4. Section 239.105 is amended by revising paragraph (c)(3) to read as follows:

§ 239.105 Debriefing and critique.

* * * * *

(c) * * *

(3) Whether the control center or the emergency response communications

center promptly initiated the required notifications, as applicable under the plan:

* * * * *

Subpart C—Review, Approval, and Retention of Emergency Preparedness Plans

5. Section 239.201 is amended by revising paragraphs (a) and (b)(3)(i) to read as follows:

§ 239.201 Emergency preparedness plan; filing and approval.

(a) *Filing of plan and amendments.* (1) *Filing of plan.* Each passenger railroad to which this part applies and all railroads hosting its passenger train service (if applicable) shall jointly adopt a single emergency preparedness plan for that service, and the passenger railroad shall file one copy of that plan with the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 25, Washington, DC 20590, not less than 60 days prior to commencing passenger operations. Any passenger railroad that has an emergency preparedness plan approved by FRA as of (the effective date of the final rule) is considered to have timely-filed its plan. The emergency preparedness plan shall include the name, title, address, and telephone number of the primary person on each affected railroad to be contacted with regard to review of the plan, and shall include a summary of each railroad's analysis supporting each plan element and describing how every condition on the railroad's property that is likely to affect emergency response is addressed in the plan.

(2) *Filing of amendments to the plan.* (i) Except as provided in paragraph (a)(2)(ii) of this section, each subsequent amendment to a railroad's emergency preparedness plan shall be filed with FRA by the passenger railroad not less than 60 days prior to the proposed effective date. When filing an amendment, the railroad must include a written summary of the proposed changes to the previously approved plan and, as applicable, a training plan describing how and when current and new employees and contractors would be trained on any amendment.

(ii) If the proposed amendment is limited to adding or changing the name, title, address, or telephone number of the primary person to be contacted on each affected railroad with regard to the review of the plan, approval is not required under the process in paragraph (b)(3)(i) of this section. These proposed amendments may be implemented by the railroad upon filing with FRA's Associate Administrator for Railroad Safety/Chief Safety Officer. All other proposed amendments must comply with the formal approval process in paragraph (b)(3)(i) of this section.

(b) * * *

(3) * * *

(i) Except as provided in paragraph (a)(2)(ii) of this section, FRA will normally review each proposed plan amendment within 45 days of receipt. FRA will then notify the primary contact person of each affected railroad of the results of the review, whether the proposed amendment has been approved by FRA, and if not approved, the specific points in which the proposed amendment is deficient.

* * * * *

Subpart D—Operational (Efficiency) Tests; Inspection of Records and Recordkeeping

6. Section 239.301 is revised to read as follows:

§ 239.301 Operational (efficiency) tests and inspections.

(a) *Requirement to conduct operational (efficiency) tests and inspections.* Each railroad to which this part applies shall periodically conduct operational (efficiency) tests and inspections of on-board, control center, and, as applicable, emergency response communications center personnel employed by the railroad, under a contract or subcontract with the railroad, or employed by a contractor or subcontractor to the railroad, to determine the extent of compliance with its emergency preparedness plan.

(1) *Written program of operational (efficiency) tests and inspections.* Operational (efficiency) tests and inspections shall be conducted pursuant to a written program. New railroads shall adopt such a program within 30 days of commencing rail operations. The program shall—

(i) Provide for operational (efficiency) testing and inspection on appropriate courses of action in response to various potential emergency situations and on the responsibilities of an employee of the railroad, of an individual who is a contractor or subcontractor to the railroad, or an employee of a contractor of subcontractor to the railroad, as they relate to the railroad's emergency preparedness plan.

(ii) Describe each type of operational (efficiency) test and inspection required, including the means and procedures used to carry it out.

(iii) State the purpose of each type of operational (efficiency) test and inspection.

(iv) State, according to operating divisions where applicable, the frequency with which each type of operational (efficiency) test and inspection is to be conducted.

(v) Identify the officer(s) by name, job title, and, division or system, who shall be responsible for ensuring that the program of operational (efficiency) tests and inspections is properly implemented. A railroad with operating divisions shall identify at least one officer at the system headquarters who is responsible for overseeing the entire program and the implementation by each division.

(vi) Require that each railroad officer who conducts operational (efficiency) tests and inspections be trained on those aspects of the railroad's emergency preparedness plan that are relevant to the operational (efficiency) tests and inspections that the officer conducts, and that the officer be qualified on the procedures for conducting such operational (efficiency) tests and inspections in accordance with the railroad's written program of operational (efficiency) tests and inspections and the requirements of this section.

(2) The operational (efficiency) testing program required by paragraph (a)(1) of this section may be combined with the written program of operational (efficiency) tests and inspections required by § 217.9(c) of this chapter.

(b) *Keeping records of operational (efficiency) tests and inspections.* Each railroad to which this part applies shall maintain a written record of the date, time, place, and result of each operational (efficiency) test and inspection that was performed in accordance with paragraph (a) of this section. Each record shall also specify the name of the railroad officer who administered the test or inspection, the name of each employee tested, and sufficient information to identify the relevant facts relied on for evaluation purposes.

(c) *Retention of operational (efficiency) test and inspection records.* Each record required by paragraph (a) of this section shall be retained at the system headquarters of the railroad and, as applicable, at the division headquarters for the division where the test or inspection was conducted, for one calendar year after the end of the calendar year to which the test or inspection relates. Each such record shall be made available to representatives of FRA and States participating under part 212 of this chapter for inspection and copying during normal business hours.

(d) *Keeping records of written program of operational (efficiency) tests and inspections.* Each railroad shall retain one copy of its current operational (efficiency) testing and inspection program required by paragraph (a) of this section and one copy of each subsequent amendment to such program. These records shall be retained at the system headquarters, and, as applicable, at each division headquarters where the operational (efficiency) tests and inspections are conducted, for three calendar years after the end of the calendar year to which they relate. These records shall be made available to representatives of FRA and States participating under part 212 of this chapter for inspection and copying during normal business hours.

(e) *Annual summary of operational (efficiency) tests and inspections.* Before March 1 of each calendar year, each railroad to which this part applies shall retain at the system headquarters of the railroad and, as applicable, at each of its division headquarters, one copy of a written summary of the following with respect to its previous calendar year activities: the number, type, and result of each operational (efficiency) test and inspection, stated according to operating divisions as applicable, that was conducted as required by paragraph (a) of this section. These records shall be retained for three calendar years after the end of the calendar year to which they relate and shall be made available to representatives of FRA and States participating under part 212 of this chapter for inspection and copying during normal business hours.

Issued in Washington, DC, on June 21, 2012.

Joseph C. Szabo,

Administrator.

[FR Doc. 2012–15746 Filed 6–26–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

RIN 0648–BC10

Sea Turtle Conservation; Shrimp Trawling Requirements; Public Hearing

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

ACTION: Proposed rule; notice of public hearing.

SUMMARY: NMFS announces a seventh public hearing to be held in Port Orange, FL on July 6, 2012, to answer questions and receive public comments on the proposed rule to withdraw the alternative tow time restriction and require all skimmer trawls, pusher-head trawls, and wing nets (butterfly trawls) rigged for fishing to use turtle excluder devices (TEDs) in their nets, which was published in the **Federal Register** on May 10, 2012. In the proposed rule, we announced five public hearings to be held in Morehead City, NC, Larose, LA, Belle Chasse, LA, D'Iberville, MS, and Bayou La Batre, AL, and on June 22, 2012 we announced an additional public hearing in Miami, FL.

DATES: A public hearing will be held on July 6, 2012, from 10 a.m. to 12 p.m. in Port Orange, FL. Written comments will be accepted through July 9, 2012.

ADDRESSES: As published on May 10, 2012 (77 FR 27411), you may submit comments on this proposed rule, identified by 0648–BC10, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.*
- *Mail:* Michael Barnette, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- *Fax:* 727–824–5309; Attention: Michael Barnette.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. We will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Michael Barnette, 727–551–5794.

SUPPLEMENTARY INFORMATION:

Meeting Date, Time, and Location

1. Friday, July 6, 2012, 10 a.m. to 12 p.m., Port Orange, FL: Port Orange Public Library, 1005 City Center Circle, Port Orange FL 32129, (386) 322–5152.

Special Accommodations

These hearings are physically accessible to people with disabilities; a Spanish language interpreter will be available, if needed.

Dated: June 22, 2012.

Samuel D. Rauch III,

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

[FR Doc. 2012–15753 Filed 6–22–12; 4:15 pm]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 77, No. 124
Wednesday, June 27, 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

Forest Service

Information Collection; Role of Communities in Stewardship Contracting Projects

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with revision of a currently approved information collection, Role of Communities in Stewardship Contracting Projects.

DATES: Comments must be received in writing on or before August 27, 2012 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Forest Service, USDA, Director, Forest Management Staff, Mail Stop 1103, 1400 Independence Avenue SW., Washington, DC 20250–1103.

Comments also may be submitted via facsimile to 202–205–1045 or by email to: *InfoCollection0201@fs.fed.us*. Comments may also be submitted via the World Wide Web/Internet at *http://www.regulations.gov*.

The public may inspect comments received at the Office of the Director, Forest Management Staff, Third Floor NW., Yates Federal Building, 201 14th Street SW., Washington, DC during normal business hours. Visitors are encouraged to call ahead to 202–205–1766 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Sharon Nygaard-Scott, Forest Service, Forest Management Staff, 202–207–1766. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Role of Communities in Stewardship Contracting Projects.

OMB Number: 0596–0201.

Expiration Date of Approval: January 31, 2013.

Type of Request: Extension with Revision.

Abstract: The Forest Service and Bureau of Land Management are required to report to Congress annually on the role of local communities in the development of agreement or contract plans through stewardship contracting, per Section 323 of Public Law 108–7 (16 U.S.C. 2104 Note). To meet the requirement, the Forest Service conducts surveys to gather the necessary information for use by both the Forest Service and Bureau of Land Management. The survey provides information regarding the:

(a) Nature of the local community involved in developing agreement or contract plans,

(b) Nature of roles played by the entities involved in developing agreement or contract plans,

(c) Benefits to the community and agency by being involved in planning and development of contract plans, and

(d) Usefulness of stewardship contracting in helping meet the needs of local communities.

The Pinchot Institute for Conservation and its sub-contractors collect the information through an annual telephone survey. The survey asks Federal employees, employees of for-profit and not-for-profit institutions, employees of State and local agencies, and individual citizens who have been involved in stewardship contracting projects about their role in the development of agreement or contract plans.

The information collected through the survey is analyzed by the Pinchot Institute for Conservation and its sub-contractors and used to help develop the Forest Service and Bureau of Land Management reports to Congress as required by Section 323 of Public Law 108–7.

Without the information from this annual collection of data, the Forest Service and Bureau of Land Management will not be able to provide the required annual reports to Congress on the role of communities in development of agreement or contract plans under stewardship contracting.

Type of Respondents: Employees of for-profit and non-profit businesses and institutions, as well as individuals.

Estimated Annual Number of Respondents: 507.

Estimate of Burden per Response: 0.75 hours.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 380 Hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: June 18, 2012.

James M. Peña,

Associate Deputy Chief, National Forest System.

[FR Doc. 2012–15704 Filed 6–26–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comment; Objections to New Land Management Plans, Plan Amendments, and Plan Revisions

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested people and organizations on the extension of a currently approved information collection, objections to new land management plans, plan amendments, and plan revisions.

DATES: Comments must be received in writing on or before August 27, 2012 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to: USDA, Forest Service, Attn: Chris French, Acting Assistant Director for Planning, Ecosystem Management Coordination, Mail Stop 1104, 1400 Independence Avenue SW., Washington, DC 20250–1104.

Comments also may be submitted via facsimile to 202–205–1012 or by email to: *rterney@fs.fed.us.*

The public may inspect comments received at the Ecosystem Management Coordination Office, 201 14th St. SW., Washington, DC, during normal business hours. Visitors are encouraged to call ahead to 202–205–0895 to assist entry into the building.

FOR FURTHER INFORMATION CONTACT: Regis Terney, Ecosystem Management Coordination, at 202–205–0895 or email to: *rterney@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Objection to new land management plans, plan amendments, and plan revisions.

OMB Number: 0596–0158.

Expiration Date of Approval: February 28, 2013.

Type of Request: Extension with revision of a currently approved collection.

Abstract: The information that would be required by Title 36, Code of Federal Regulations, Part 219–Planning, Subpart A–National Forest System Land Management Planning (36 CFR part 219, subpart B), section 219.54 is the minimum information needed for a person to make a clear objection to a proposed land management plan, plan amendment, or plan revision. Under 36 CFR 219.54, a person shall provide name, mailing address, and telephone number, or email address if available; signature; the name of the specific plan, amendment or revision that is the subject of the objection; and the name and title of the responsible official; a statement of the issues and/or the parts of the plan, plan amendment, or plan revision to which the objection applies; a concise statement explaining the objection and suggesting how the proposed plan decision may be improved. If applicable, the objector should identify how the objector believes that the plan, plan amendment, or plan revision is inconsistent with law, regulation, or policy; and a statement that demonstrates the link between prior substantive formal comments attributed to the objector and the content of the objection, unless the objection concerns an issue that arose after the opportunities for formal comment (§ 219.53(a)).

The reviewing officer shall review the objection(s) and relevant information and then respond to the objector(s) in writing.

Estimate of Annual Burden: 10 hours to prepare the objection.

Type of Respondents: Interested and affected people, organizations, and governmental units who participate in the planning process: such as people who live in or near National Forest System (NFS) lands; local, State, and Tribal governments who have an interest in the plan; Federal agencies with an interest in the management of NFS lands and resources; not-for-profit organizations interested in NFS management, such as environmental groups, recreation groups, educational institutions; and commercial users of NFS land and resources.

Estimated Annual Number of Respondents: 36 per year.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 360 hours.

Comment is invited on: (1) Whether the right information is being requested, including whether the information will have practical value; (2) whether the instructions in 36 CFR 219.54 are clear; (3) whether the Forest Service estimate of the burden of the collection of information is accurate, (10 hours); (4) ways to enhance the quality, usefulness, and clarity of the information to be collected; (5) ways to make the objections available to people, (6) ways to minimize the burden of the collection of information on people, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: June 18, 2012.

James M. Peña,

Associate Deputy Chief, National Forest System.

[FR Doc. 2012–15705 Filed 6–26–12; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, July 6, 2012; 9:30 a.m. EDT.

PLACE: 624 Ninth Street NW., Room 540, Washington, DC 20425.

Meeting Agenda

This meeting is open to the public.

I. Approval of Agenda

II. Program Planning Update and discussion of projects:

- Discussion and Vote on Strategic Plan
- Vote on 2012 Final Statutory Report
- Update on Immigration Briefing
- Scheduling of Future Briefings

III. Management and Operations

- Discussion on Agency Staffing

IV. Adjourn Meeting

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at *signlanguage@usccr.gov* at least seven business days before the scheduled date of the meeting.

Dated: June 25, 2012.

Kimberly Tolhurst,

Senior Attorney-Advisor.

[FR Doc. 2012–15899 Filed 6–25–12; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341

et seq.), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance (TAA) from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[05/30/2012 through 06/20/2012]

Firm name	Firm address	Date accepted for investigation	Product(s)
Rainbow Leather, Inc	1415 112th Street, College Point NY 11356.	06/07/12	The firm manufactures printed leather for shoe and boot wholesalers.
Award Flooring, LLP	401 North 72nd Avenue, Wausau WI 54401.	06/07/12	The firm manufactures engineered hardwood flooring.
Bruin Manufacturing, Co.	607 North 4th Avenue, Marshaltown IA 50158.	06/08/12	The firm manufactures injection molded plastic clips, drawer slides, caps, connectors, and rings.
Homeart Designs, LLC.	6419 McPherson Road, Laredo TX 78041.	06/14/12	The firm manufactures custom cabinets.
ABCO Tool & Die, Inc	11 Thornton Drive, Hyannis MA 2601	06/14/12	The firm manufactures steel injection molds.
Performance Design, LLC. dba Rhin-O-Tuff.	2350 East Braniff, Boise ID 83716	06/14/12	The firm manufactures finishing equipment for the print industry including paper punches, coil inserters, wire closers, comb openers.
Jacobson Hat Company, Inc	1301 Ridge Row, Scranton PA 18510	06/15/12	The firm creates personalized hats, headgear, and novelty hats made of felt and other materials.
Wing's Sportswear, Inc. and Alamo Tees & Advertising.	12814 Cogburn Avenue, San Antonio TX 78249.	06/19/12	The firm manufactures embroidered fashion apparel and accessories.
Ineeka, Inc	2023 W. Carroll Street, Suite 263, Chicago IL 60612.	06/19/12	The firm manufactures organic tea and herb beverage products.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: June 21, 2012.

Miriam Kearse,

Eligibility Certifier, TAA for Firms.

[FR Doc. 2012–15663 Filed 6–26–12; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1834]

Approval for Expanded Manufacturing Authority; Foreign-Trade Subzone 7M; Amgen Manufacturing Limited (Biotechnology and Healthcare Products); Juncos, Puerto Rico

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Puerto Rico Industrial Development Company, grantee of FTZ 7, has requested an expansion of the scope of manufacturing authority on behalf of Amgen Manufacturing Limited (Amgen), within Subzone 7M in Juncos, Puerto Rico (FTZ Docket 80–2011, filed 12–15–2011);

Whereas, notice inviting public comment has been given in the **Federal Register** (76 FR 80332–80333, 12–23–2011) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand the scope of manufacturing authority under zone procedures within Subzone 7M, as described in the application and **Federal Register** notice, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Signed at Washington, DC, this 18 day of June 2012.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2012–15747 Filed 6–26–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1833]

Approval for Manufacturing Authority; Foreign-Trade Zone 15; Blount, Inc. (Log Splitters); Kansas City, MO

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as

amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Greater Kansas City Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 15, has requested manufacturing authority on behalf of Blount, Inc., within FTZ 15 in Kansas City, Missouri, (FTZ Docket 76–2011, filed 11–29–2011);

Whereas, notice inviting public comment has been given in the **Federal Register** (76 FR 76122, 12–6–2011) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application for manufacturing authority under zone procedures within FTZ 15 on behalf of Blount, Inc. as described in the application and **Federal Register** notice, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Signed at Washington, DC, this 18th day of June 2012.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2012–15728 Filed 6–26–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1837]

Reorganization of Foreign-Trade Zone 136 Under Alternative Site Framework; Brevard County, FL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09; 75 FR 71069–71070, 11/22/10) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Canaveral Port Authority, grantee of Foreign-Trade Zone 136, submitted an application to the Board (FTZ Docket 48–2010, filed 08/02/10; amended 04/23/12) for authority to reorganize under the ASF with a service area of Brevard County, within and adjacent to the Port Canaveral Customs and Border Protection port of entry, FTZ 136's existing Sites 1–4 and 6 would be categorized as magnet sites, Site 5 would be categorized as a usage-driven site, Site 3—Parcel 2 would be renumbered as Site 6, and Site 3—Parcel 3 would be removed;

Whereas, notice inviting public comment was given in the **Federal Register** (75 FR 47537, 8/6/10) and the application, as amended, has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal, as amended, is in the public interest;

Now, therefore, the Board hereby orders:

The amended application to reorganize FTZ 136 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 1, 2, 3, 4 and 6 if not activated by June 30, 2017, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Site 5 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by June 30, 2015.

Signed at Washington, DC, this 18th day of June 2012.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2012–15739 Filed 6–26–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1836]

Reorganization of Foreign-Trade Zone 100 under Alternative Site Framework; Dayton, OH

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09; 75 FR 71069–71070, 11/22/10) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Greater Dayton Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 100, submitted an application to the Board (FTZ Docket 1–2012, filed 01/3/2012) for authority to reorganize under the ASF with a service area of Auglaize, Darke, Fayette, Greene, Mercer, Miami, Montgomery, Preble and Shelby Counties, Ohio, within and adjacent to the Dayton Customs and Border Protection port of entry, and FTZ 100's existing Site 1 would be categorized as a magnet site, existing Sites 2–5 would be removed, the acreage of Site 1 would be reduced, and FTZ 100's existing Site 6 would be categorized as a usage-driven site;

Whereas, notice inviting public comment was given in the **Federal Register** (77 FR 1053, 1/9/2012) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 100 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, and to a three-year sunset provision for usage-driven sites that would terminate authority for Site 6 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by June 30, 2015.

Signed at Washington, DC, this 18 day of June 2012.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2012–15742 Filed 6–26–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1829]

Voluntary Termination of Foreign-Trade Subzone 33B Verosol USA, Inc. Kennedy Township, Allegheny County, PA

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board has adopted the following order:

Whereas, on December 28, 1988, the Foreign-Trade Zones Board issued a grant of authority to the Regional Industrial Development Corporation of Southwestern Pennsylvania, grantee of FTZ 33, authorizing the establishment of Foreign-Trade Subzone 33B at the Verosol USA, Inc., plant in Kennedy Township, Allegheny County, Pennsylvania (Board Order 416, 54 FR 164, 1/4/89);

Whereas, the Regional Industrial Development Corporation of Southwestern Pennsylvania has advised that zone procedures are no longer needed at the facility and requested voluntary termination of Subzone 33B (FTZ Docket 15–2012);

Whereas, the request has been reviewed by the FTZ Staff and Customs and Border Protection officials, and approval has been recommended;

Now, therefore, the Foreign-Trade Zones Board terminates the subzone status of Subzone 33B, effective this date.

Dated: Signed at Washington, DC, this 18 day of June 2012.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2012–15733 Filed 6–26–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–833]

Stainless Steel Bar From Japan: Final Results of Antidumping Duty Changed-Circumstances Review, and Revocation of Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 29, 2012, the Department of Commerce (the Department) published in the **Federal Register** a notice of initiation and preliminary results of the antidumping duty changed-circumstances review with intent to revoke in part the order on stainless steel bar (SSBar) from Japan (the Order).[1] In the *Initiation and Preliminary Results,* we invited interested parties to comment on the preliminary determinations to exclude three products under Grades 304 and 440C, as described below, from the scope of the Order and to revoke the Order in part retroactively to February 1, 2010. The Department received no comments from interested parties. Therefore, the Department is revoking the Order in part to exclude the three products described below in *New Scope Language,* effective February 1, 2010.

DATES: *Effective Date:* February 1, 2010.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen or Minoo Hatten, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3683 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1995, the Department published the Order.[2] On February 14, 2012, Suruga USA Corp. (Suruga) requested that the Department conduct a changed-circumstances review of the Order.[3] On May 7, 2012, Suruga submitted revised product descriptions, as described below, with respect to one product under Grade 304 and two products under Grade 440C.[4] Suruga stated that, although the form of the descriptions was revised for ease of understanding, the products described in its May 7, 2012 submission are identical to those in its February 14, 2012 submission.[5] On May 11, 2012, we received a submission from the petitioners[6] expressing a lack of interest in the products identified in Suruga's May 7, 2012, request and certifications that they account for virtually all of the domestic production of the particular SSBar.[7] On May 29, 2012, we published the initiation and preliminary results of this changed-circumstances review.[8] As noted above, we gave interested parties an opportunity to comment on the *Initiation and Preliminary Results.*[9] We received no comments from interested parties.

Scope of the Order

The scope of the order covers SSBar. The term SSBar with respect to the order means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSBar includes cold-finished SSBars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut-length flat-rolled products (*i.e.,* cut-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.,* cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

In addition, the term does not include certain valve/stem stainless steel round bar of 21–2N modified grade, having a diameter of 5.7 millimeters (with a tolerance of 0.025 millimeters), in length no greater than 15 meters, having a chemical composition consisting of a minimum of 0.50 percent and a maximum of 0.60 percent of carbon, a minimum of 7.50 percent and a

[1] *See Stainless Steel Bar From Japan: Initiation and Preliminary Results of Antidumping Duty Changed-Circumstances Review, and Intent To Revoke Order in Part,* 77 FR 31578 (May 29, 2012) (*Initiation and Preliminary Results*).

[2] *See Notices of Antidumping Duty Orders: Stainless Steel Bar from Brazil, India, and Japan,* 60 FR 9661 (February 21, 1995).

[3] *See generally* Suruga's Letter to the Department, dated February 14, 2012.

[4] *See* Suruga's Letter to the Department, dated May 7, 2012 at Attachment A.

[5] *See id.* at 1 and Attachment A.

[6] The petitioners are Carpenter Technology Corporation, Crucible Industries LLC, Electralloy Corporation a Division of G.O. Carlson Inc. Co., North American Stainless, Outokumpu Stainless Bar, Inc., Universal Stainless & Alloy Products, Inc., and Valbruna Slater Stainless, Inc.

[7] *See* the petitioners' letter to the Department, dated May 11, 2012, at 1. The petitioners used the term ''virtually all'' in their May 11, 2012, letter. *See id.* at 1–2. For the final results, the Department continues to interpret the phrase ''virtually all'' as fulfilling the ''substantially all'' threshold provided under section 351.222(g)(1)(i) of the Department's regulations.

[8] *See generally Initiation and Preliminary Results.*

[9] *See id.* 77 FR at 31580.

maximum of 9.50 percent of manganese, a maximum of 0.25 percent of silicon, a maximum of 0.04 percent of phosphorus, a maximum of 0.03 percent of sulfur, a minimum of 20.0 percent and a maximum of 22.00 percent of chromium, a minimum of 2.00 percent and a maximum of 3.00 percent of nickel, a minimum of 0.20 percent and a maximum of 0.40 percent of nitrogen, a minimum of 0.85 percent of the combined content of carbon and nitrogen, and a balance minimum of iron, having a maximum core hardness of 385 HB and a maximum surface hardness of 425 HB, with a minimum hardness of 270 HB for annealed material.[10]

The SSBar subject to the order is currently classifiable under subheadings 7222.11.00, 7222.19.00, 7222.20.00, and 7222.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS).[11] Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Final Results of Antidumping Duty Changed-Circumstances Review and Revocation of the Order in Part

Pursuant to sections 751(d)(1) and 782(h)(2) of the Tariff Act of 1930 (the Act), as amended, the Department may revoke an antidumping duty order in part after conducting a changed-circumstances review under section 751(b) of the Act. Section 751(b)(1) requires a changed-circumstances review to be conducted upon the receipt of a request which shows changed-circumstances sufficient to warrant a review.

The affirmative statement of no interest by the petitioners regarding the products, as described below in the New Scope Language section, along with the fact that no other domestic interested party commented on the *Initiation and Preliminary Results,* constitutes sufficient support on the part of virtually all domestic producers of like merchandise to warrant revocation of the Order in part. Therefore, in accordance with sections 751(d)(1) and 782(h) of the Act and sections 351.216(d) and 351.222(g)(1)(i) of the Department's regulations, the Department is partially revoking the Order with regard to the products meeting the specifications described below.

New Scope Language

As a result of the final results of this changed-circumstances review, the Department will add the following language, as the penultimate paragraph, to the scope of the Order: ''Furthermore, effective for entries entered, or withdrawn for warehouse, for consumption on or after February 1, 2010, the term does not include one SSBar product under Grade 304 and two types of SSBar products under Grade 440C. (1) The Grade 304 product meets the following descriptions: round cross-section, cold finished, chrome plated (plating thickness 10 microns or greater), hardness of plating a minimum 750 HV on the Vickers Scale, maximum roundness deviation of 0.020 mm (based on circularity tolerance described in JIS B 0021 (1984)), in actual (measured) lengths from 2000 mm to 3005 mm, in nominal outside diameters ranging from 6 mm to 30 mm (diameter tolerance for any size from minus 0.010 mm to minus 0.053 mm). Tolerance can be defined as the specified permissible deviation from a specified nominal dimension; for example if the nominal outside diameter of the product entering is 6 mm, then the actual measured sizes should fall within 5.947 mm to 5.990 mm; (2) The first Grade 440C product meets the following descriptions: round cross-section, cold finished, heat treated through induction hardening, minimum Rockwell hardness of 56 Hardness of 56 HRC, maximum roundness deviation of 0.007 mm (based on circularity tolerance described in JIS B 0021 (1984)), in actual (measured) lengths from 500 mm to 3005 mm, in nominal outside diameters ranging from 3 mm to 38.10 mm (diameter tolerance for any size from 0.00 mm to minus 0.150 mm). Tolerance can be defined as the specified permissible deviation from a specified nominal dimension; for example if the nominal outside diameter of the product entering is 3 mm, then the actual measured sizes should fall within 2.850 mm to 3.000 mm; (3) The second Grade 440C product meets the following descriptions: round cross-section, cold finished, chrome plated (plating thickness 5 microns or greater), heat treated through induction hardening, minimum Rockwell Hardness of 56 HRC, maximum roundness deviation of 0.007 mm (based on circularity tolerance described in JIS B 0021 (1984)), in actual (measured) lengths from 2000 mm to 3005 mm, in nominal outside diameters ranging from 6 mm to 30 mm (diameter tolerance for any size from minus 0.004 mm to minus 0.020 mm). Tolerance can be defined as the specified permissible deviation from a specified nominal dimension; for example if the nominal outside diameter of the product entering is 6 mm, then the actual measured sizes should fall within 5.980 mm to 5.996 mm.''

Effective Date of Revocation

As stated in the *Initiation and Preliminary Results,* it is the Department's practice to revoke an order (in whole or in part) so that the effective date of revocation covers entries that have not been subject to a completed administrative review.[12] Absent any comments from interested parties, the Department continues to find that it is appropriate to revoke the Order in part retroactively to February 1, 2010, since the Department has not completed an administrative review of the Order for the period February 1, 2010, through January 31, 2011. Therefore, in accordance with section 751(d)(3) of the Act and section 351.222(g)(4) of the Department's regulations, the Department will instruct U.S. Customs and Border Protection (CBP) to (1) terminate the suspension of liquidation of all unliquidated entries of the three types of SSBar from Japan described above, entered, or withdrawn from warehouse, for consumption on or after February 1, 2010, and (2) liquidate such entries without regard to antidumping duties. The Department will further instruct CBP to refund with interest any estimated duties collected with respect to unliquidated entries of the three types of SSBar from Japan described above, entered or withdrawn from warehouse, for consumption on or after February 1, 2010, in accordance with section 778 of the Act and section 351.222(g)(4) of the Department's regulations.

[10] *See Final Results of Antidumping Duty Changed-Circumstances Review and Revocation of Order in Part: Stainless Steel Bar from Japan,* 71 FR 70959, 70960 (December 7, 2006).

[11] The Department previously listed 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 in the scope of the Order. *See* id. 71 FR at 7059. On February 14, 2010, the above-referenced numbers were replaced with 7222.10.10, 7222.11.00, 7222.19.00, 7222.20.00, and 7222.30.00. As a result of recent changes to the HTSUS, effective February 3, 2012, the subject merchandise is no longer classifiable under HTSUS 7222.10.00. *See* Harmonized Tariff Schedule of the United States, available at *http://www.usitc.gov/tata/hts/bychapter/_1200.htm.*

[12] *See* 77 FR at 31580 (citing *Notice of the Final Results of Changed Circumstances Review and Revocation of the Antidumping Order: Coumarin from the People's Republic of China,* 69 FR 24122 (May 3, 2004) and the accompanying Issues and Decision Memorandum at 3; *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany: Notice of Final Results of Changed Circumstances Review, Revocation of the Antidumping Duty Order, and Rescission of Administrative Reviews,* 67 FR 19551, 19552 (April 22, 2002)).

Notification Regarding Administrative Protective Order

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.306 of the Department's regulations. Timely written notification of the return and/or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is published in accordance with section 777(i)(1) of the Act and sections 351.216(e) and 351.222(g)(3)(vii) of the Department's regulations.

Dated: June 20, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–15759 Filed 6–26–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Florida Keys National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following positions on the Florida Keys National Marine Sanctuary Advisory Council: Citizen at Large—Lower Keys (alternate), Citizen at Large—Middle Keys (member), Citizen at Large—Middle Keys (alternate), Conservation and Environment [2nd of 2] (member), Conservation and Environment [2nd of 2] (alternate), Education and Outreach (member), Education and Outreach (alternate), Fishing—Commercial—Shell/Scale (member), Fishing—Commercial—Shell/Scale (alternate), South Florida Ecosystem Restoration (alternate), Submerged Cultural Resources (member), Submerged Cultural Resources (alternate), Tourism—Upper Keys (member), and Tourism—Upper Keys (alternate). Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve 3-year terms, pursuant to the council's Charter.

DATES: Applications are due by July 31, 2012.

ADDRESSES: Application kits may be obtained from Lilli Ferguson, Florida Keys National Marine Sanctuary, 33 East Quay Rd., Key West, FL 33040. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Lilli Ferguson, Florida Keys National Marine Sanctuary, 33 East Quay Rd., Key West, FL 33040; (305) 809–4700 x245; *Lilli.Ferguson@noaa.gov*.

SUPPLEMENTARY INFORMATION: Per the council's Charter, if necessary, terms of appointment may be changed to provide for staggered expiration dates or member resignation mid term.

Authority: 16 U.S.C. Sections 1431, et seq. (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: June 6, 2012.

Daniel J. Basta,

Director of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2012–15653 Filed 6–26–12; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board; Meeting

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Time and Date: The meeting will be held Monday, July 16, 2012 from 9 a.m. to 5:30 p.m. and Tuesday, July 17, 2012 from 8:30 a.m. to 2:30 p.m. These times and the agenda topics described below are subject to change. Please refer to the Web page *http://www.sab.noaa.gov/Meetings/meetings.html* for the most up-to-date meeting agenda.

Place: The meeting will be held at the NOAA Pacific Marine Environmental Laboratory, 7600 Sand Point Way NE., Seattle, Washington 98115.

Please check the SAB Web site *http://www.sab.noaa.gov* for directions to the meeting location.

Status: The meeting will be open to public participation with a 15 minute public comment period on July 16 at 5:15 p.m. (check Web site to confirm time). The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Individuals or groups planning to make a verbal presentation should contact the SAB Executive Director by July 9, 2012 to schedule their presentation.

Written comments should be received in the SAB Executive Director's Office by July 9, 2012 to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after July 9, 2012 will be distributed to the SAB, but may not be reviewed prior to the meeting date. Seating at the meeting will be available on a first-come, first-served basis.

Special Accommodations: These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed no later than 12 p.m. on July 9, 2012, to Dr. Cynthia Decker, SAB Executive Director, SSMC3, Room 11230, 1315 East-West Hwy., Silver Spring, MD 20910.

Matters to be Considered: The meeting will include the following topics: (1) Ocean Exploration Advisory Working Group Report on Review of the Ocean Exploration Program; (2) Update from the SAB Research and Development Portfolio Review Task Force; (3) Update from the SAB Satellite Task Force (4) Update on the NOAA Response to SAB Report on Integrated Ecosystem Assessments: Draft Guidelines for Integrated Ecosystem Assessments; (5) Update on Use of the NOAA Logo; (7) Updates from SAB Working Groups; (8) Science Presentations from the NOAA Alaska

and Northwest Fisheries Science Centers; the NOAA Pacific Marine Environmental Laboratory and the NOAA Office of Response and Restoration.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, Rm. 11230, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Fax: 301–713–1459, Email: *Cynthia.Decker@noaa.gov;* or visit the NOAA SAB Web site at *http://www.sab.noaa.gov.*

Dated: June 20, 2012.

Terry Bevels,

Acting Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2012–15452 Filed 6–26–12; 8:45 am]

BILLING CODE 3510–KD–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 777 No. 121, Friday, June 22, 2012, page 37660.

ANNOUNCED TIME AND DATE OF OPEN MEETING: 10 a.m.–11 a.m., Wednesday June 27, 2012.

CHANGES TO OPEN MEETING: REVISED AGENDA AND TIME: Matters to be Considered: (1) Decisional Matters: Play Yards—Final Rule; (2) Briefing Matter: Representative Samples; 10 a.m.–12 p.m., Wednesday, June 27, 2012.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: June 25, 2012.

Todd A. Stevenson,

Secretary.

[FR Doc. 2012–15840 Filed 6–25–12; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Availability of the Fiscal Year 2011 United States Special Operations Command (USSOCOM) Inventory List of Contracts for Services

AGENCY: United States Special Operations Command (USSOCOM), Department of Defense (DoD).

ACTION: Notice of availability.

SUMMARY: In accordance with section 2330a of Title 10, United States Code as amended by the National Defense Authorization Act for Fiscal Year 2012, the Director of Procurement USSOCOM and the Office of the Director, Defense Procurement and Acquisition Policy, Office of Strategic Sourcing (DPAP/SS) will make available to the public the first inventory of activities performed pursuant to contracts for services. The inventory will be published to the USSOCOM public portal Web site at the following location: *http://www.socom.mil/sordac/Documents/USSOCOM_FY11_Services_Inventory_List.pdf.*

DATES: Inventory to be made publically available within 30 days after publication of this notice.

ADDRESSES: Send written comments and suggestions concerning this inventory to Marian Duchesne, Procurement Analyst, SORDAC–KM (Team Jacobs), 7701 Tampa Point Blvd., MacDill AFB, FL 33621–5323.

FOR FURTHER INFORMATION CONTACT: Marian Duchesne at (813) 826–6499 or email *marian.duchesne.ctr@socom.mil.*

Dated: June 22, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–15702 Filed 6–26–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2012–OS–0077]

Privacy Act of 1974; System of Records

AGENCY: Defense Security Service, DoD.

ACTION: Notice to Delete Four Systems of Records.

SUMMARY: The Defense Security Service is deleting four systems of records notices from its existing inventory of record systems subject to the Privacy Act of 1974, as amended.

DATES: This proposed action will be effective without further notice on July 27, 2012 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Follow the instructions for submitting comments.

- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie Blake, Defense Security Service, Office of FOIA/PA, 27130 Telegraph Road, Quantico, VA 22314 or at (571) 305–6740.

SUPPLEMENTARY INFORMATION: The Defense Security Service systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed deletions are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: June 21, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions:

V5–05

Joint Personnel Adjudication System (JPAS) (July 1, 2005, 70 FR 38120)

V5–01

Investigative Records Repository (IRR) (September 30, 2011, 76 FR 60812)

REASON:

JPAS and IRR have been transferred to the Office of the Secretary, DoD/Joint Staff (DMDC 12 DoD, Joint Personnel Adjudication System (JPAS) (May 3, 2011, 76 FR 24863) and DMDC 11 DoD, Investigative Records Repository (IRR) (September 30, 2011, 76 FR 60812, respectively). All records associated with these programs were transferred with the systems; therefore these systems of records notices can now be deleted.

V5–03

Case Control Management System (CCMS) (September 14, 1999, 64 FR 49776)

REASON:

The Case Control Management System (CCMS) data was migrated into DMDC 12 DoD, Joint Personnel Adjudication System (JPAS) (May 3, 2011, 76 FR 24863) upon its development. There is no longer a need to retain backup data since JPAS is fully operational, therefore the system of records can now be deleted.

V10–01

Investigation and Inspection Supplier Contract Files (August 17, 1999, 64 FR 44704)

REASON:

The Investigation and Inspection Supplier Contract Files contained copies of contracts and payment data on individual contractors who performed investigations/inspections for Defense Security Service (DSS) on an as needed basis. DSS has not used contractors since 2003 so the data was destroyed in accordance with approved financial data retention schedules; therefore this system can now be deleted.

[FR Doc. 2012–15609 Filed 6–26–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Emerging Growth Enterprise LLC

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant Emerging Growth Enterprise LLC a revocable, nonassignable, exclusive license to practice in the field of fire fighting foam discharge and suppression testing systems in the United States and its territories, and North America for the Government-owned invention represented by U.S. Patents numbers 6,588,286 (Issued July 8, 2003), 6,615,675 (Issued September 9, 2003), 6,715,373 (Issued April 6, 2004), 6,739,174 (Issued May 25, 2004), and 7,290,457 (Issued November 6, 2007) and entitled, ''Nofoam system for testing a foam delivery system on a vehicle'', No. 7,293,478 (Issued November 13, 2007) and entitled ''Method for testing a foam delivery system on a vehicle'', and patent application numbers 13/372,755 and 13/372,712 and entitled ''Foam Free Testing Systems and Methods.''

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than July 12, 2012.

ADDRESSES: Written objections are to be filed with the Naval Facilities Engineering Service Center, Code CI90, 1100 23rd Avenue, Port Hueneme, CA 93043–4370, attention: Kurt Buehler.

FOR FURTHER INFORMATION CONTACT: Kurt Buehler, Technology Transfer Office, Naval Facilities Engineering Service Center, Code CI90, 1100 23rd Avenue, Port Hueneme, CA 93043–4370, telephone 805–982–1225. Due to U.S. Postal delays, please fax 805–982–3481, email: *kurt.buehler@navy.mil* or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: June 14, 2012.

L.R. Almand,

Office of the Judge Advocate General, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2012–15652 Filed 6–26–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy, DoE.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, July 11, 2012 6:00 p.m.

ADDRESSES: Department of Energy Information Center, 1 Science.gov Way, Oak Ridge, Tennessee 37830.

FOR FURTHER INFORMATION CONTACT: Melyssa P. Noe, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 241–3315; Fax (865) 576–0956 or email: *noemp@oro.doe.gov* or check the Web site at *www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE-EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Welcome and Announcements
- Comments from the Deputy Designated Federal Officer
- Comments from the DOE, Tennessee Department of Environment and Conservation, and Environmental Protection Agency Liaisons
- Public Comment Period
- Presentation
- Additions/Approval of Agenda
- Motions/Approval of June Meeting Minutes
- Status of Recommendations with DOE
- Committee Reports
- Federal Coordinator Report
- Adjourn

Public Participation: The EM SSAB, Oak Ridge, 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 Melyssa P. Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/minutes.htm.*

Issued at Washington, DC on June 19, 2012.

Carol A. Matthews,

Committee Management Officer.

[FR Doc. 2012–15769 Filed 6–26–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

AGENCY: Department of Energy, DoE.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Secretary of Energy

Advisory Board (SEAB). SEAB was reestablished pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) (the Act). This notice is provided in accordance with the Act.

DATES: Thursday, July 19, 2012, 3:00 p.m.–4:30 p.m.

Location: Teleconference.

FOR FURTHER INFORMATION CONTACT: Alyssa Morrissey, Deputy Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; telephone (202) 586–2926 or facsimile (202) 586–1441; *seab@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

Background: The Board was reestablished to provide advice and recommendations to the Secretary on the Department's basic and applied research, economic and national security policy, educational issues, operational issues and other activities as directed by the Secretary.

Purpose of the Meeting: The Buildings Efficiency and Small Modular Reactor Subcommittees will present progress updates on their respective reports to the Board. The Subcommittees' interim reports will be submitted to the Board for review at the following full committee meeting.

Tentative Agenda: The meeting will start at 3:00 p.m. on July 19. The meeting agenda includes reports from the Buildings Efficiency and Small Modular Reactor Subcommittees on the general progress of their reports. A full discussion of draft reports and recommendations will take place later this calendar year. The meeting will conclude at 4:30 p.m.

Public Participation: The meeting will be conducted by teleconference and is open to the public. Individuals who would like to call in must RSVP to Alyssa Morrissey no later than 5:00 p.m. on Monday, July 16, 2012 at *seab@hq.doe.gov*. There will be a limited number of call-in ports and RSVP is required to obtain dial-in information. Call-in ports will be made available to members of the public on a first come, first served basis. Individuals and representatives of organizations who would like to offer comments may do so at the meeting on Thursday, July 19, 2012. Approximately 30 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed 5 minutes. Public Comment will be available on a first come, first served basis and will be queued by the call operator. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Those not able to call in to the meeting or have insufficient time to address the committee are invited to send a written statement to Alyssa Morrissey, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, email to *seab@hq.doe.gov*.

Minutes: The minutes of the meeting will be available on the SEAB Web site *http://www.energy.gov/SEAB* or by contacting Ms. Morrissey. She may be reached at the postal address or email address above.

Issued in Washington, DC, on June 22, 2012.

Carol A. Matthews,

Committee Management Officer.

[FR Doc. 2012–15774 Filed 6–26–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Laboratory

AGENCY: Department of Energy, DoE.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Laboratory. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, July 11, 2012, 8:00 a.m.–5:00 p.m.

Opportunities for public participation will be from 11:15 a.m. to 11:30 a.m. and from 3:15 p.m. to 3:30 p.m.

These times are subject to change; please contact the Federal Coordinator (below) for confirmation of times prior to the meeting.

ADDRESSES: Red Lion Hotel, 1555 Pocatello Creek Road, Pocatello, Idaho 83201.

FOR FURTHER INFORMATION CONTACT: Robert L. Pence, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1203, Idaho Falls, Idaho 83415. Phone (208) 526–6518; Fax (208) 526–8789 or email: *pencerl@id.doe.gov* or visit the Board's Internet home page at: *http://inlcab.energy.gov/*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Topics (agenda topics may change up to the day of the meeting; please contact Robert L. Pence for the most current agenda):

- Recent Public Involvement and Outreach
- Idaho EM Cleanup Status
- Calcine Disposition Paths
- Waste Isolation Pilot Project Waste Acceptance Initiatives and Advanced Mixed Waste Treatment Project Status
- Idaho Funding Strategies for Fiscal Years 2013 and 2014
- Blue Ribbon Commission Implementation Plan Update
- Experimental Breeder Reactor II Deactivation and Decommission (D&D) Status and Idaho D&D Overall Strategies
- Integrated Waste Treatment Unit and Idaho Nuclear Technology and Engineering Center Status

Public Participation: The EM SSAB, Idaho National Laboratory, 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 Robert L. Pence at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Robert L. Pence at the address or telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Robert L. Pence, Federal Coordinator, at the address and phone number listed above. Minutes will also be available at the following Web site: *http://inlcab.energy.gov/pages/meetings.php.*

Issued at Washington, DC, on June 20, 2012.

Carol A. Matthews,

Committee Management Officer.

[FR Doc. 2012–15777 Filed 6–26–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

President's Council of Advisors on Science and Technology Meeting

AGENCY: Department of Energy, DoE.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a partially closed meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA), 5 U.S.C., App.

DATES: July 19, 2012.

ADDRESSES: National Academy of Sciences, 2101 Constitution Avenue NW., Washington, DC in Room 125.

FOR FURTHER INFORMATION CONTACT: Information regarding the meeting agenda, time, location, and how to register for the meeting is available on the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.* A live video webcast and an archive of the webcast after the event are expected to be available at *http://whitehouse.gov/ostp/pcast.* The archived video will be available within one week of the meeting. Questions about the meeting should be directed to Dr. Deborah D. Stine, PCAST Executive Director, at *dstine@ostp.eop.gov*, (202) 456–6006. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology (PCAST) is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House and from cabinet departments and other Federal agencies. See the Executive Order at *http://www.whitehouse.gov/ostp/pcast.* PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of science, technology, and innovation may bear on the policy choices before the President. PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President, Broad Institute of the Massachusetts Institute of Technology and Harvard.

Type of Meeting: Open and Closed.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST) is scheduled to meet in open session on July 19, 2012 from 9 a.m. to 5 p.m.

Open Portion of Meeting: During this open meeting, PCAST is tentatively scheduled to hear from speakers who will provide information on nuclear physics and neuroscience. PCAST will also receive an update on the status of several of its studies including those on the Future of the U.S. Science and Technology Research Enterprise and Agriculture Preparedness and U.S. Agricultural Research. Additional information and the agenda, including any changes that arise, will be posted at the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.*

Closed Portion of the Meeting: PCAST may hold a closed meeting of approximately 1 hour with the President on July 19, 2012, which must take place in the White House for the President's scheduling convenience and to maintain Secret Service protection. This meeting will be closed to the public because such portion of the meeting is likely to disclose matters that are to be kept secret in the interest of national defense or foreign policy under 5 U.S.C. 552b(c)(1).

Public Comments: It is the policy of the PCAST to accept written public comments of any length, and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on July 19, 2012 at a time specified in the meeting agenda posted on the PCAST Web site at *http://whitehouse.gov/ostp/pcast.* This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at *http://whitehouse.gov/ostp/pcast*, no later than 12 p.m. Eastern Time on July 12, 2012. Phone or email reservations will not be accepted. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. If more speakers register than there is space available on the agenda, PCAST will randomly select speakers from among those who applied. Those not selected to present oral comments may always file written comments with the committee. Speakers are requested to bring at least 25 copies of their oral comments for distribution to the PCAST members.

Written Comments: Although written comments are accepted continuously, written comments should be submitted to PCAST no later than 12:00 p.m. Eastern Time on July 12, 2012 so that the comments may be made available to the PCAST members prior to this meeting for their consideration. Information regarding how to submit comments and documents to PCAST is available at *http://whitehouse.gov/ostp/pcast* in the section entitled ''Connect with PCAST.''

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

Meeting Accommodations: Individuals requiring special accommodation to access this public meeting should contact Dr. Stine at least ten business days prior to the meeting so that appropriate arrangements can be made.

Issued in Washington, DC, on June 22, 2012.

Carol A. Matthews,

Committee Management Officer.

[FR Doc. 2012–15778 Filed 6–26–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Wind and Water Power Program

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

ACTION: Notice of public meeting.

SUMMARY: The Department of Energy (DOE) Wind and Water Power Program is planning a coordination workshop to exchange information among parties engaged in Mid-Atlantic marine ecological survey, modeling, and database efforts. This meeting will be a technical discussion to provide those involved in these activities with information regarding the current efforts of others involved in similar or related efforts.

DATES: DOE will hold a workshop on Tuesday, July 24, 2012, from 8:30 a.m. to 5:00 p.m. and Wednesday, July 25, 2012, from 8:30 a.m. to 5:00 p.m. in Silver Spring, MD. RSVP is required by July 7, 2012.

ADDRESSES: The workshop will be held at NOAA's Silver Spring headquarters

located at 1305 East-West Hwy, SSMC–4, Room 1W611, Silver Spring, MD 20910–3281.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Gilman, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 586–3449. Email: *patrick.gilman@ee.doe.gov*.

SUPPLEMENTARY INFORMATION: The purpose of this workshop is to share information among parties engaged in marine ecological survey, modeling, and database efforts in the waters off the Mid-Atlantic. The workshop aims to provide information and an opportunity to those involved to help ensure that efforts are well-coordinated, complementary and, to the greatest extent possible, that these efforts help meet baseline data and derived product needs for siting and permitting offshore wind facilities. Specifically, this workshop will address ongoing offshore ecological survey efforts and the potential for development of complementary predictive models and compatible Federal and regional databases. It is not the object of this session to obtain any group position or consensus. Participants should limit information and comments to those based on personal experience, individual advice, information, or facts regarding this topic. This meeting is an opportunity for participants to gain an individual understanding of ecological survey efforts. To most effectively use the limited time, please refrain from passing judgment on another participant's recommendations or advice and, instead, concentrate on your individual experiences.

Public Participation: Federal agencies, scientists, modelers, and data management experts will be in attendance. The event is open to the public based on space availability. Participants are required to pre-register and space is limited.

Pre-Registration: To pre-register, please contact Ms. Jenn ZiBerna via email at *Mid-atlanticworkshop@sra.com* or by telephone at 202.554.8480 Ext. 2932. Participants interested in attending should provide their names, company name or organization (if applicable), telephone number, email, and country of citizenship no later than the close of business on July 7, 2012. All attendees are required to pre-register.

Agenda: The first day of the workshop will focus on information sharing between and on-going coordination of current and recent wildlife surveys in the Mid-Atlantic. The second day will be comprised of two tracks: one focused on identifying challenges and coordination opportunities among current biological modeling efforts for species in the Mid-Atlantic and the second focused on increasing compatibility among data systems used to house survey data.

Information on Services for Individuals with Disabilities: Individuals requiring special accommodations at the meeting, please contact Ms. ZiBerna no later than the close of business on July 7, 2012.

Minutes: A summary report of the meeting will be available for printing at the DOE Wind Program Online Publication and Product Library at: *wind.energy.gov/publications.html*.

Issued in Washington, DC on June 13, 2012.

Mark Higgins,

Wind and Water Power Acting Program Manager, Office of Energy Efficiency and Renewable Energy.

[FR Doc. 2012–15772 Filed 6–26–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

U.S. Energy Information Administration

Collection Revision

AGENCY: Energy Information Administration (EIA), Department of Energy, DOE.

ACTION: Notice and request for comments.

SUMMARY: The EIA invites public comment on the proposed change to add a new vehicle classification code to Form EIA–886, *Annual Survey of Alternative Fueled Vehicles,* which EIA 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 received on or before August 27, 2012. If you anticipate difficulty in submitting comments within that period, contact the person listed in the **ADDRESSES** section below as soon as possible.

ADDRESSES: Written comments may be sent to Cynthia Amezcua, EI–22, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, or by fax at (202) 586–9753 or by email at *cynthia.amezcua@eia.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Cynthia Amezcua by phone at (202) 586–1658 or by email at the address listed above. Access to the proposed form, instructions, and internet data collection screens can be found at: *https://eiaweb.inl.gov/2013-clearance.pdf*.

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.:* 1905–0191;

(2) *Information Collection Request Title:* Annual Survey of Alternative Fueled Vehicles;

(3) *Type of Request:* Revision of a currently approved collection;

(4a) *Purpose:* Form EIA–886 is an annual survey that collects information on the number and type of alternative fueled vehicles (AFVs) and other advanced technology vehicles that vehicle suppliers made available in the previous calendar year and plan to make available in the following calendar year; the number, type and geographic distribution of AFVs in use in the previous calendar year; and the amount and distribution of each type of alternative transportation fuel (ATF) consumed in the previous calendar year. Form EIA–886 data are collected from suppliers and users of AFVs. EIA uses data from these groups as a basis for estimating total AFV and ATF use in the U.S. These data are needed by Federal and State agencies, fuel suppliers, transit agencies and other fleets to determine if sufficient quantities of AFVs are available for purchase and to provide Congress with a measure of the extent to which the objectives of the Energy Policy Act of 1992 are being achieved. These data serve as market analysis tools for Congress, Federal/State agencies, AFV suppliers, vehicle fleet managers, and other interested organizations and persons. These data are also needed to satisfy numerous public requests for detailed information

on AFVs and ATFs (in particular, the number of AFVs distributed by State, as well as the amount and location of the ATFs being consumed).

EIA publishes summary information from the Form EIA–886 database in an annual report on EIA's Web site (*www.eia.gov*). This report covers historical and projected supplies of AFVs, AFV usage by selected user groups, and estimates of total U.S. AFV counts and U.S. consumption of ATFs. These data provide baseline inputs for DOE's transportation sector energy models. They also provide the energy consumption measures for alternative transportation fuels in EIA's State Energy Data System. For example, EIA's National Energy Modeling System (NEMS) has a component model that forecasts transportation sector energy consumption and provides a framework for AFV policy and technology analysis. The data obtained from Form EIA–886 are used to improve the explanatory power of the NEMS Transportation Demand Model by allowing for greater detail in representing AFV types and characteristics;

(4b) *Proposed Changes to Information Collection:* EIA is proposing the addition of a Fuel Type/Engine Configuration Code to collect data on plug-in hybrid electric vehicles (PHEV). PHEVs are considered alternative fueled vehicles under the Energy Policy Act of 1992 definition of an alternative fueled vehicle because their primary fuel source is electricity; however, they differ from straight battery-powered electric vehicles because they use an electric battery as the primary energy source for propulsion for a limited range (15–40 miles) before switching to internal combustion propulsion. Currently, EIA collects data on electric battery-powered vehicles with the code ''EVC BP''. EIA would like to add the code ''EVC PH'' to differentiate between PHEVs and AFVs that are powered exclusively by battery. EIA would continue to use the code ''EVC BP'' to identify vehicles that are powered exclusively by an electric battery.

Sections 2 and 3 of the Form EIA–886 collect data on the inventory and supply of alternative fueled vehicles. In Section 2, respondents are required to report the vehicle type, fuel type, engine configuration, application, quantity, miles traveled, and alternative fuel consumption for all AFVs in use. In Section 3, respondents are required to report the vehicle type, model, fuel type, engine configuration, and quantities made available and planned to be made available for all AFVs and advanced technology vehicles supplied. Both sections of the online reporting system utilize drop-down menus to capture these data. The proposed code ''EVC PH'' would be added under the Electric Fuel Type Category. EIA does not expect this proposed addition of a vehicle classification code to Form EIA–886 to cause any increase in reporting burden.

(4c). Change in Burden Hours: Due to the decrease in the number of original equipment manufacturers and aftermarket vehicle converters in the marketplace, EIA estimates the survey frame of suppliers for the Form EIA–886 to decrease from 75 to 50 respondents, thus creating a decrease in overall respondent burden hours from 10,812 hours to 10,740 hours;

(5) *Annual Estimated Number of Total Responses:* 2,050;

(6) *Annual Estimated Number of Burden Hours:* 10,740;

AFV Suppliers (30 Original Equipment Manufacturers): 3 hours;

AFV Suppliers (20 Aftermarket Vehicle Converters): 2.5 hours;

AFV Users (100 complex fleets): 30 hours;

AFV Users (1,900 simple fleets): 4 hours;

(7) *Annual Estimated Reporting and Recordkeeping Cost Burden:* No additional costs beyond burden hours are anticipated from the proposed collection instrument revision.

Statutory Authority: The legal authority for this data collection effort is provided by the following provisions:

Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, (FEA Act), and codified at 15 U.S.C. § 772 (b), and

Section 503(b)(2) of the Energy Policy Act of 1992, Pub. L. 102–486 (EPACT92) codified at 42 U.S.C. 13253.

Issued in Washington, DC on June 21, 2012.

Renee Miller,

Acting Director, Office of Survey Development and Statistical Integration, U.S. Energy Information Administration.

[FR Doc. 2012–15773 Filed 6–26–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–796–000.

Applicants: Wyoming Interstate Company, LLC.

Description: CO2 Gas Quality Settlement Filing of Wyoming Interstate Company, LLC.

Filed Date: 6/11/12.

Accession Number: 20120611–5015.

Comments Due: 5 p.m. ET 6/28/12.

Docket Numbers: RP12–250–000.

Applicants: Kern River Gas Transmission Company.

Description: 2012 Motion Filing to be effective 6/20/2012.

Filed Date: 6/20/12.

Accession Number: 20120620–5055.

Comments Due: 5 p.m. ET 7/2/12.

Docket Numbers: RP12–816–000.

Applicants: El Paso Natural Gas Company.

Description: Reduction to Specified Rates on an Interim Basis to be effective 7/1/2012.

Filed Date: 6/20/12.

Accession Number: 20120620–5117.

Comments Due: 5 p.m. ET 7/2/12.

Docket Numbers: RP12–817–000.

Applicants: Colorado Interstate Gas Company LLC.

Description: Fuel Filing to be effective 7/1/2012.

Filed Date: 6/20/12.

Accession Number: 20120620–5118.

Comments Due: 5 p.m. ET 7/2/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 21, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–15736 Filed 6–26–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3253–001.
Applicants: Turner Energy, LLC.
Description: Notice of Change in Status of Turner Energy, LLC.
Filed Date: 6/19/12.
Accession Number: 20120619–5163.
Comments Due: 5 p.m. ET 7/10/12.

Docket Numbers: ER12–1182–000.
Applicants: Pacific Gas and Electric Company.
Description: Refund Report for Clean Energy Agreements to be effective N/A.
Filed Date: 6/19/12.
Accession Number: 20120619–5007.
Comments Due: 5 p.m. ET 7/10/12.

Docket Numbers: ER12–1629–004.
Applicants: Interstate Power and Light Company.
Description: IPL RES–5 Wholesale Tariff Revisions Amendment to be effective 7/1/2012.
Filed Date: 6/19/12.
Accession Number: 20120619–5156.
Comments Due: 5 p.m. ET 7/10/12.

Docket Numbers: ER12–1842–002.
Applicants: The Finerty Group, Inc.
Description: Amendment to Filing2 to be effective 5/25/2012.
Filed Date: 6/19/12.
Accession Number: 20120619–5001.
Comments Due: 5 p.m. ET 7/3/12.

Docket Numbers: ER12–2065–000.
Applicants: Aequitas Energy, Inc.
Description: Baseline New to be effective 6/19/2012.
Filed Date: 6/19/12.
Accession Number: 20120619–5006.
Comments Due: 5 p.m. ET 7/10/12.

Docket Numbers: ER12–2067–000.
Applicants: MidAmerican Energy Company.
Description: Certificates of Concurrence—ITC Midwest to be effective 7/3/2012.
Filed Date: 6/19/12.
Accession Number: 20120619–5023.
Comments Due: 5 p.m. ET 7/10/12.

Docket Numbers: ER12–2068–000.
Applicants: Blue Sky East, LLC.
Description: Application for Market-Based Rate Authorization to be effective 8/18/2012.
Filed Date: 6/19/12.
Accession Number: 20120619–5040.
Comments Due: 5 p.m. ET 7/10/12.

Docket Numbers: ER12–2069–000.
Applicants: AEP Texas North Company.
Description: Higher Power Energy SUA Amendment No. 1 to be effective 5/24/2012.
Filed Date: 6/19/12.
Accession Number: 20120619–5070.
Comments Due: 5 p.m. ET 7/10/12.

Docket Numbers: ER12–2070–000.
Applicants: ITC Midwest LLC.
Description: ITC Midwest LLC Filing of a Notice of Succession to be effective 8/20/2012.
Filed Date: 6/19/12.
Accession Number: 20120619–5132.
Comments Due: 5 p.m. ET 7/10/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 20, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–15647 Filed 6–26–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–2071–000]

Verde Energy USA New York, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Verde Energy USA New York, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 11, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 21, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–15646 Filed 6–26–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–OPP–2009–0681; FRL–9349–5]

Final Test Guidelines; 810 Series 2000 Product Performance; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of the final test guidelines for Series 810—Product Performance Test Guidelines for Public Health Uses of Antimicrobial Agents, concerning specifically OCSPP 810.2400—Disinfectants and Sanitizers for Use on Fabrics and Textiles—Efficacy Data Recommendations; OSCPP 810.2500—Air Sanitizers—Efficacy Data

Recommendations; and OSCPP 810.2600—Disinfectants and Sanitizers for Use in Water—Efficacy Data Recommendations. These test guidelines are part of a series of test guidelines established by the Office of Chemical Safety and Pollution Prevention (OCSPP) for use in testing pesticides and chemical substances to develop data for submission to the Agency under the Toxic Substances Control Act (TSCA), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). As guidance documents, the final test guidelines are not binding on either EPA or any outside parties. These test guidelines are final and effective 90 days after publication of this notice.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Melissa Chun, Regulatory Coordination Staff (7101M), Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–1605; email address: *chun.melissa@epa.gov.*

For technical information contact: Michele E. Wingfield, Antimicrobials Division, (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (410) 305–2662; email address: *wingfield.michele@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

These test guidelines are part of a series of test guidelines established by OCSPP for use in testing pesticides and chemical substances to develop data for submission to the Agency under TSCA (15 U.S.C. 2601 *et seq.*), FIFRA (7 U.S.C. 136 *et seq.*), and FFDCA section 408 (21 U.S.C. 346a).

The test guidelines serve as a compendium of accepted scientific methodologies and protocols that are intended to provide data to inform regulatory decisions under TSCA, FIFRA, and/or FFDCA. The test guidelines provide guidance for conducting the test, and are also used by EPA, the public, and companies that are subject to data submission requirements under TSCA, FIFRA and/or FFDCA.

As guidance documents, the test guidelines are not binding on either EPA or any outside parties, and EPA may depart from the test guidelines where circumstances warrant and without prior notice. At places in these guidance documents, the Agency uses the word ''should.'' In these guidance documents, use of ''should'' with regard to an action means that the action is recommended rather than mandatory. The procedures contained in the test guidelines are recommended for generating the data that are the subject of the test guidelines, but EPA recognizes that departures may be appropriate in specific situations. You may propose alternatives to the recommendations described in the test guidelines, and the Agency will assess them for appropriateness on a case-by-case basis.

II. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who are or may be required to conduct testing of pesticides and chemical substances for submission to EPA under TSCA, FIFRA and/or FFDCA, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How can I get copies of this document and other related information?

1. *Docket for this document.* The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2009–0681, is available either electronically through *http://www.regulations.gov* or in hard copy at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Rm. 3334, 1301 Constitution Ave. NW. Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

2. *Electronic access to the OCSPP Test Guidelines.* To access OCSPP test guidelines electronically, please go to *http://www.epa.gov/ocspp/pubs/frs/home/testmeth.htm.* You may also access the test guidelines in *http://www.regulations.gov,* grouped by series under docket ID numbers: EPA–HQ–OPPT–2009–0150 through EPA–HQ–OPPT–2009–0159 and EPA–HQ–OPPT–2009–0576.

III. Overview

A. What action is EPA taking?

EPA is announcing the availability of final test guidelines under Series 810—Product Performance Test Guidelines for Public Health Uses of Antimicrobial Agents:

1. OCSPP 810.2400—Disinfectants and Sanitizers for Use on Fabrics and Textiles—Efficacy Data Recommendations .

2. OSCPP 810.2500—Air Sanitizers—Efficacy Data Recommendations.

3. OSCPP 810.2600—Disinfectants and Sanitizers for Use in Water—Efficacy Data Recommendations.

These final test guidelines address efficacy testing for antimicrobial agents intended to be used as disinfectants and sanitizers for use on fabrics, on textiles, in the air and in water.

B. How were these final test guidelines developed?

The product performance guidelines for antimicrobial agents were last updated in 1982 under the ''Pesticide Assessment Guidelines—Subdivision G, Product Performance.'' Since then, the Agency has presented several issues at two separate meetings of the FIFRA Scientific Advisory Panel (SAP) related to the conduct of studies for antimicrobial agents (the first meeting September 9–10, 1997, announced in the **Federal Register** issue of July 14, 1997 (62 FR 37584) (FRL–5731–4) and the second meeting July 17–19, 2007, announced in the **Federal Register** issue of March 14, 2007 (72 FR 11867) (FRL–8118–7). Information and recommendations regarding these two SAPs can be found at the Office of Science and Coordination and Policy's Web site: *http://www.epa.gov/scipoly/sap/index.htm.* The test guidelines described in Unit III were also made available for public comment on September 15, 2011 (76 FR 57031) (FRL 8879–1) and revised based on comments received from industry. In addition, formatting changes to incorporate the test guidelines into the OCSPP test guideline 810 series were made.

List of Subjects

Environmental protection, Chemical testing, Test guidelines.

Dated: June 19, 2012.

James Jones,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2012–15604 Filed 6–26–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2009–0154; FRL–9333–1]

Final Test Guidelines; OCSPP 850 Series; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of the final test guidelines for Series 850—Ecological Effects Test Guidelines, consisting of Groups B, C, D, and F. These test guidelines are part of a series of test guidelines established by Office of Chemical Safety and Pollution Prevention (OCSPP) for use in testing pesticides and chemical substances to develop data for submission to the Agency under the Toxic Substances Control Act (TSCA), the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), and section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA). As guidance documents, the test guidelines are not binding on either EPA or any outside parties.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Melissa Chun, Regulatory Coordination Staff (7101M), Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–1605; email address: *chun.melissa@epa.gov.*

For technical information contact: Amy Blankinship, Environmental Fate and Effects Division (7507P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–8062; email address: *blankinship.amy@epa.gov,* or Kathryn Gallagher, Risk Assessment Division (7403M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–1398; email address: *gallagher.kathryn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

These test guidelines are part of a series of test guidelines established by OCSPP for use in testing pesticides and chemical substances to develop data for submission to the Agency under TSCA (15 U.S.C. 2601 *et seq.*), FIFRA (7 U.S.C. 136 *et seq.*), and section 408 of FFDCA (21 U.S.C. 346a).

The test guidelines serve as a compendium of accepted scientific methodologies and protocols that are intended to provide data to inform regulatory decisions under TSCA, FIFRA, and/or FFDCA. The test guidelines provide guidance for conducting the test, and are also used by EPA, the public, and the companies that are subject to data submission requirements under TSCA, FIFRA, and/or FFDCA.

As guidance documents, the test guidelines are not binding on either EPA or any outside parties, and EPA may depart from the test guidelines where circumstances warrant and without prior notice. At places in this guidance, the Agency uses the word ''should.'' In this guidance, use of ''should'' with regard to an action means that the action is recommended rather than mandatory. The procedures contained in the test guidelines are recommended for generating the data that are the subject of the test guideline, but EPA recognizes that departures may be appropriate in specific situations. Alternatives to the recommendations described in the test guidelines may be proposed, and the Agency will assess them for appropriateness on a case-by-case basis.

II. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who are or may be required to conduct testing of pesticides and chemical substances for submission to EPA under TSCA, FIFRA, and/or FFDCA, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How can I get copies of this document and other related information?

1. *Docket for this document.* The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2009–0154, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

2. *Electronic access to OCSPP test guidelines.* To access OCSPP test guidelines electronically, please go to *http://www.epa.gov/ocspp/pubs/frs/home/testmeth.htm.* You may also access the test guidelines at *http://www.regulations.gov* grouped by series under docket ID numbers: EPA–HQ–OPPT–2009–0150 through EPA–HQ–OPPT–2009–0159 and EPA–HQ–OPPT–2009–0576.

III. Overview

A. What action is EPA taking?

EPA is announcing the availability of final test guidelines under Series 850—Ecological Effects Test Guidelines, consisting of Groups B, C, D, and F:

- Group B—Terrestrial Wildlife.
- Group C—Terrestrial Beneficial Insects, Invertebrates, and Soil and Wastewater Microorganisms.
- Group D—Terrestrial and Aquatic Plants, Cyanobacteria, and Terrestrial Soil Core Microcosm.
- Group F—Field Test Data Reporting Guidelines.

OCSPP, formerly the Office of Prevention, Pesticides and Toxic Substances (OPPTS), established a unified library of test guidelines for use in developing data for submission to EPA under TSCA, FFDCA, and/or FIFRA. Beginning in 1991, EPA initiated an effort to harmonize the test guidelines within OCSPP, as well as to harmonize the OCSPP test guidelines with those of the Organization for Economic Cooperation and Development (OECD). The process for developing and amending these test guidelines has included public participation and the extensive involvement of the scientific community, including peer review by the FIFRA Scientific Advisory Panel (SAP), the Scientific Advisory Board (SAB), and other expert scientific organizations. With this notice, EPA is announcing the availability of the final test guidelines OCSPP 850 Series, consisting of Groups B, C, D, and F dealing with ecological effects for use in testing chemical substances and developing data for submission to EPA. Test guidelines in this series were made available for public comment by a notice document published in the **Federal Register** issue of March 4, 1996 (61 FR 8279) (FRL–4990–3). The peer review on May 29, 1996 by FIFRA SAP was announced in a meeting notice published in the **Federal Register** issue of May 1, 1996 (61 FR 19276) (FRL–

5366–3). The test guidelines were subsequently revised in response to FIFRA SAP and public comments.

Based on comments from FIFRA SAP and from the public, the following changes were made in the final test guidelines:

1. *Group titles and organization changes.* EPA is changing the title of Group D ''Nontarget Plants Test Guidelines'' to ''Terrestrial and Aquatic Plants, Cyanobacteria, and Terrestrial Soil Core Microcosm Test Guidelines.'' The term ''nontarget,'' which is not applicable to OPPT, is removed from the Group D title, broadening the scope to all test guidelines evaluating effects to plants. The following test guidelines involving plants are renumbered and moved to Group D: OCSPP 850.4500 ''Algal Toxicity'' (Public Draft OPPTS 850.5400) and OCSPP 850.4900 ''Terrestrial Soil-Core Microcosm Test'' (Public Draft OPPTS 850.2450).

EPA is changing the title of Group C ''Beneficial Insects and Invertebrates Test Guidelines'' to ''Terrestrial Beneficial Insects, Invertebrates, and Soil and Wastewater Microorganism Test Guidelines,'' expanding the scope to include testing of microorganisms other than the aquatic algae. The following microorganism test guidelines are renumbered and moved to Group C: OCSPP 850.3200 ''Soil Microbial Community Toxicity Test'' (Public Draft OPPTS 850.5100) and OCSPP 850.3300 ''Modified Activated Sludge, Respiration Inhibition Test'' (Public Draft OPPTS 850.6800).

EPA is moving the ''Earthworm Subchronic Toxicity Test'' test guideline from the Public Draft Group F ''Chemical Specific Test Guidelines'' to Group C and renumbering it from OPPTS 850.6200 to OCSPP 850.3100. The earthworm is being added to Group C since it is a beneficial soil invertebrate.

EPA is changing the Group G designation to Group F, and the test guideline contained within it (Public Draft OPPTS 850.7100) is renumbered OCSPP 850.6100. The title for Group E is removed as it no longer contains any test guidelines; however, Group E and its title are reserved.

2. *Title change for OCSPP 850.4000.* EPA is changing the title of OCSPP 850.4000 ''Background—Nontarget Plant Testing'' to ''Background and Special Considerations: Tests with Terrestrial and Aquatic Plants, Cyanobacteria, and Terrestrial Soil-Core Microcosms.'' The new title reflects the change in the Group D title.

3. *Background and special consideration test guideline addition for Group B and Group C and content revision of Group D.* EPA is adding two background and special consideration test guidelines: OCSPP 850.2000 ''Background and Special Considerations: Terrestrial Wildlife'' and OCSPP 850.3000 ''Background and Special Considerations: Terrestrial Beneficial Insects, Invertebrates, and Soil and Wastewater Microorganisms.'' The addition of these test guidelines are in response to comments regarding harmonizing the organization of test guidelines and improving the consistency of terminology and guidance applicable across test guidelines in a group. These test guidelines provide general guidance on test methods, statistics, and data reporting and an overview of the use for OPPT and OPP. Such test guidelines already exist for Group A (OPPTS 850.1000) and Group D (OCSPP 850.4000). Information contained within the OCSPP 850.2000 and OCSPP 850.3000 is based on information extracted from the test guidelines within their respective group and on general statistical methods applicable to toxicity testing.

With the addition of test guidelines from other groups, OCSPP 850.4000 was updated to reflect general information applicable across test guidelines in Group D. This information was extracted from the existing test guidelines. Additionally, a description of the meaning of the terms ''Tier I,'' ''Tier II,'' and ''Tier III,'' under TSCA in contrast to their definitions under FIFRA, was added.

4. *Title changes and merging and splitting of test guidelines*—i. *Removal of terms ''Tiers I, II, and III'' from test guideline titles and consolidation of resulting common test guidelines.* The terms ''Tier I,'' ''Tier II,'' or ''Tier III'' used in these test guideline titles are not necessary and are misleading as they have different regulatory meanings under OPP and OPPT. These tests, though, are used by both programs. EPA is changing the OPPTS 850.4400 ''Aquatic Plant Toxicity Test Using *Lemna* Spp., Tiers I and II'' and OPPTS 850.5400 (now OCSPP 850.4500) ''Algal Toxicity, Tiers I and II'' test guideline titles by removing ''Tiers I and II.''

EPA is also removing the terms ''Tier I'' and ''Tier II'' and then consolidating and harmonizing the ''Tier I'' test guidelines with their ''Tier II'' test guideline counterparts for the following test guidelines: The ''Terrestrial Plant Toxicity, Tier I (Seedling Emergence)'' and ''Seedling Emergence, Tier II'' test guidelines (Public Drafts OPPTS 850.4100 and OPPTS 850.4225, respectively). These test guidelines were merged and harmonized into OCSPP 850.4100 ''Seedling Emergence and Seedling Growth.'' The ''Terrestrial Plant Toxicity, Tier I (Vegetative Vigor)'' and ''Vegetative Vigor, Tier II'' test guidelines (Public Draft OPPTS 850.4150 and OPPTS 850.4250, respectively) were merged and harmonized into OCSPP 850.4150 ''Vegetative Vigor.'' For these test guidelines, except for the number of treatment levels, ''Tier I'' test conditions (referred to as limit tests) are essentially the same as ''Tier II'' (definitive tests) test conditions.

EPA is changing the title of OPPTS 850.4450 ''Aquatic Plants Field Study, Tier III'' test guideline by removing the term, ''Tier III.''

EPA is also removing the term ''Tier III'' from the OPPTS 850.4300 ''Terrestrial Plants Field Study, Tier III'' test guideline. Public Draft OPPTS 850.4025 ''Target Area Phytotoxicity'' was merged with Public Draft OPPTS 850.4300 to create a single test guideline, OCSPP 850.4300 ''Terrestrial Plants Field Study.'' The target area test guideline covers a special case of a terrestrial plant field study for OPP, where the study area is the area intentionally treated with a pesticide when label use directions are followed. The OCSPP 850.4300 ''Terrestrial Plants Field Study'' provides flexibility to cover this special case for OPP, if needed.

ii. *Division of the Algal Toxicity Test into two separate guidelines.* EPA split the Public Draft OPPTS 850.5400 ''Algal Toxicity, Tiers I and II'' test guideline into two test guidelines: OCSPP 850.4500 ''Algal Toxicity'' and OCSPP 850.4550 ''Cyanobacteria (*Anabaena flos-aquae*) Toxicity'' (in addition to removing ''Tiers I and II''). This division of the unicellular species into two different test guidelines provides a clearer differentiation between methodological approaches prescribed for testing cyanobacteria and those for testing the unicellular algae. Additionally, this division addresses the reclassification of blue-green algae as cyanobacteria.

5. *Standardization of test guideline organization.* The FIFRA SAP recommended that the ecological effects test guidelines include the same organizational format and that the tables summarizing test conditions for appropriate test guidelines contain consistent concepts across test guidelines. As a result of these suggestions, information was moved within the test guidelines, but the information remained the same. Tables summarizing test conditions and test validity elements were added to test guidelines in which species specific or

laboratory measurements were defined. In all test guidelines where a calculated response measure (e.g., average specific growth rate) was derived from direct response measures (e.g., weight), equations were provided.

6. *Highlights of technical changes*—i. *Addition of a limit test option.* Public comments indicated that a limit test could be an option to a definitive test in additional test guidelines. A limit test provides an opportunity to reduce the number of animals to be tested and/or resources. Test guidelines where a limit test is appropriate and a limit test option was added include the following: OCSPP 850.2200 ''Avian Dietary Toxicity Test;'' OCSPP 850.2400 ''Wild Mammal Toxicity Test;'' OCSPP 850.3100 ''Earthworm Subchronic Toxicity Test;'' OCSPP 850.3300 ''Modified Activated Sludge, Respiration Inhibition Test;'' OCSPP 850.4230 ''Early Seedling Growth Toxicity Test;'' and OCSPP 850.4600 ''Rhizobium-Legume Toxicity.'' Although a limit test option is available for OCSPP 850.2100, OCSPP 850.2200, and OCSPP 850.2400, language was added that if sublethal effects are observed at the limit dose, a definitive test should be conducted.

ii. *Modification of limit dosage or concentration ''cut-off'' values.* The limit dosage or concentration values for tests for pesticides were originally set at values seen in the literature as ''cut off'' values. It was believed that few, if any, pesticides would be applied at a label rate that would result in residues equal to or greater than these values. Based on current exposure models used within the Office of Pesticide Programs (OPP), though, there are cases where estimated environmental residue values are higher than limit values provided in the public drafts, and there are also cases where actual or expected environmental exposure levels may be higher than the limit values for industrial chemicals. To address these case-by-case occurrences, language was added saying that the limit value should be adjusted upward if environmental exposure concentrations are expected to be higher than the limit value. In addition, guidance on how to calculate a pesticide estimated environmental concentration for comparison to a typical limit value was included in each test guideline with a limit test option.

iii. *Group B test guidelines.* In OCSPP 850.2100 ''Avian Acute Oral Toxicity Test,'' passerine species and alternative species were added as test species in response to FIFRA SAP comments for additional alternative test species and the new passerine 40 CFR part 158 data requirement published in the **Federal Register** issue of October 26, 2007 (72 FR 60934–60988) (FRL–8106–5). Furthermore, the option of testing additional sex and age groups (including breeding females) on a case-by-case basis, as well as confirmation of dosing solutions, were added to address comments. OCSPP 850.2200 ''Avian Dietary Toxicity'' was modified to specify that young birds cannot survive 5 days without feeding. Additionally, when delayed effects are observed or expected, the guidance extending the observation period recommends testing for at least 14 days but continuing until overt evidence of toxicity has subsided.

There were also issues raised with the cage sizes provided in OCSPP 850.2300 ''Avian Reproduction Test.'' In response to these comments, the specific cage sizes provided in OCSPP 850.2300 were removed and replaced with a recommendation to follow current best practices for the care and testing of laboratory animals, as recommended cage sizes for avian species for use in reproductive tests are evolving. The health and presence/absence of signs of stress in control animals are used to help evaluate housing and handling conditions. Additionally, language was added to increase the minimum number of replicate pens per treatment to 16, and the measurement endpoint of hatchling body weight was added. Furthermore, the initial test subject age was reduced to as low as 16 weeks to address comments on problems of starting with older test subjects and impacts on acclimation, holding, and initial photoperiod during the reproduction phase.

iv. *Group C test guidelines.* In OCSPP 850.3020 ''Honey Bee Acute Contact Toxicity'' and OCSPP 850.3030 ''Honey Bee Toxicity of Residues on Foliage,'' the age of test bees was harmonized with that in OECD 214 ''Honeybees, Acute Contact Toxicity Test'' and with FIFRA SAP comments. A method for immobilizing bees using cold temperature was included and the wording on the source of bees was changed to an ''apparently disease-free colony'' in response to comments on collection techniques and source of bees. In addition, language regarding measurements of residue concentrations on the foliage was added.

v. *Group D test guidelines.* In conducting ecological risk assessments, both hypothesis-based endpoints (No Observed Effect Concentration/Lowest Observed Effect Concentration (NOEC/LOEC)) and regression-based endpoints (e.g., inhibition concentration IC_{25} or IC_{50}) are recommended in OCSPP 850.4100 ''Seedling Emergence and Seedling Growth,'' OCSPP 850.4150 ''Vegetative Vigor,'' OCSPP 850.4400 ''Aquatic Plant Toxicity Test Using *Lemna* spp.,'' OCSPP 850.4500 ''Algal Toxicity,'' and OCSPP 850.4550 ''Cyanobacteria (*Anabaena flos-aquae*) Toxicity.'' Within these test guidelines, text was modified to clarify both objectives and test acceptability in terms of both definitive and limit tests. A number of modifications to OCSPP 850.4400 were made to harmonize the test guideline with OECD 221 ''*Lemna sp* Growth Inhibition.'' A change in the period of testing from 14 days to 7 days was made in alignment with the OECD 221 guideline based on bridging data between 7-day and 14-day results. An evaluation of in-house toxicity data on *Lemna gibba* demonstrated no significant difference between the inhibition concentration endpoint values at 7 days versus 14 days.

The minimum number of replicates has been increased to 4 for OCSPP 850.4100 ''Seedling Emergence and Seedling Growth,'' OCSPP 850.4150 ''Vegetative Vigor,'' OCSPP 850.4400 ''Aquatic Plant Toxicity Testing Using *Lemna* spp.,'' OCSPP 850.4500 ''Algal Toxicity,'' and OCSPP 850.4550 ''Cyanobacteria (*Anabaena flos-aquae*) Toxicity'' to reflect the objective of these tests within OPP in which a hypothesis-based no observable adverse effect concentration (NOAEC) in addition to the regression-based IC_X is calculated. The NOAEC is used in endangered and threatened species assessments and there are cases where nonparametric tests, which require a minimum of 4 replicates, are needed to evaluate the results. Additional modifications to OCSPP 850.4550 were made to reflect FIFRA SAP recommendations of not continuously shaking test vessels during the test and using sonification only to facilitate counting.

B. How were these test guidelines developed?

OCSPP has developed a unified library of test guidelines, which are used in the testing of pesticides and toxic substances, and in the development of test data to meet the data requirements of the Agency or for voluntary testing purposes. Test guidelines are documents that specify methods that EPA recommends for generating data to support the registration of a pesticide, for setting of a tolerance or tolerance exemption for pesticide residues, or for the decisionmaking process for an industrial chemical. These test data are used by the Agency to perform risk assessments and make regulatory decisions. Studies conducted according to these test guidelines may be required

under FIFRA (7 U.S.C. 136) for pesticide registration, pursuant to 40 CFR part 158. Test guideline studies may also be useful for satisfying FIFRA data requirements either in data call-ins issued pursuant to FIFRA section 3(c)(2)(B) or as needed to satisfy data requirements appropriate for specific pesticide registration applications, or for satisfying data requirements to demonstrate the safety of a tolerance or tolerance exemption under FFDCA section 408 (21 U.S.C. 346a).

Test guidelines used in regulatory actions as the basis for test standards under TSCA (15 U.S.C. 2601) are typically promulgated in 40 CFR part 799. They may also be written into specific TSCA rules such as TSCA section 4 test rules or consent orders or they may be used as recommended test guidelines as part of voluntary testing. Note that where data will be required under a TSCA rule, such as a test rule under TSCA section 4, a TSCA-specific version of the applicable test guideline may be promulgated as a rule. Examples of specific chemical test rules and consent orders may be found in 40 CFR part 799, subparts B and C.

The availability of public draft test guidelines for public comment was announced in a March 4, 1996 **Federal Register** notice. The public draft test guidelines were placed in the EPA Docket for public access. These public draft test guidelines were also submitted by EPA to FIFRA SAP on May 29, 1996, for peer review and was announced in a May 1, 1996 **Federal Register** notice. These final test guidelines incorporate changes recommended by FIFRA SAP and other changes resulting from the public comments received in response to the 1996 public draft test guidelines. The majority of comments and changes dealt with the organizational structure of the test guideline groups, consistency of organization and format across the ecological effects guidelines, addition of tables summarizing test conditions, addition of tables summarizing test validity elements, consistency in use of terminology, and updating of references. The reporting section of each test guideline now provides a list of study specific information to include in a study report based on study reporting requirements specified in 40 CFR 160.185 for FIFRA and 40 CFR 792.185 for TSCA.

List of Subjects

Environmental protection, Chemical testing, Test guideline.

Dated: June 19, 2012.

James Jones,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2012–15540 Filed 6–26–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0101; FRL–9348–5]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any currently registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before July 27, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2012–0101; FRL–9348–5, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: A contact person is listed at the end of each registration application summary and may be contacted by telephone, email, or mail. Mail correspondence to the Biopesticides and Pollution Prevention Division (7511P) or the Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number). If you are commenting in a docket that addresses multiple products, please indicate to which file symbol(s) your comment applies.

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

1. *File Symbol:* 71711–GI. *Docket Number:* EPA–HQ–OPP–2011–0971. *Applicant:* Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808. *Product name:* Pyrifluquinazon Technical. *active ingredient:* Pyrifluquinazon: [1-acetyl-1,2,3,4-tetrahydro-3-[(3-pyridylmethyl) amino]-6-[1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]quinazolin-2-one] at 99.50%. *Proposed classification/use:* Formulation of products for indoor greenhouse use on ornamental plants. *Contact:* Clayton Myers, Registration Division, (703) 347–8874, email address: *myers.clayton@epa.gov.*

2. *File Symbol:* 71711–GT. Docket Number: EPA–HQ–OPP–2011–0971. Applicant: Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808. *Product name:* Pyrifluquinazon Insecticide. *Active ingredient:* Pyrifluquinazon: [1-acetyl-1,2,3,4-tetrahydro-3-[(3-pyridylmethyl)amino]-6-[1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]quinazolin-2-one] at 20.0%. *Proposed classification/use:* Indoor greenhouse use on ornamental plants. *Contact:* Clayton Myers, Registration Division, (703) 347–8874, email address: *myers.clayton@epa.gov.*

3. *File Symbol:* 71840–RE. *Docket Number:* EPA–HQ–OPP–2012–0265. *Applicant:* Becker Underwood, Inc., 801 Dayton Avenue, P.O. Box 667, Ames, IA 50010. *Product name: Bacillus pumilus* strain BU F–33 Technical. *Active ingredient:* Elicitor of Induced Systemic Resistance with *Bacillus pumilus* strain BU F–33 at 95%. *Proposed classification/use:* Manufacturing use product. *Contact:* Jeannine Kausch, (703) 347–8920, email address: *kausch.jeannine@epa.gov.*

4. *File Symbol:* 71840–RG. *Docket Number:* EPA–HQ–OPP–2012–0265. *Applicant:* Becker Underwood, Inc., 801 Dayton Avenue, P.O. Box 667, Ames, IA 50010. *Product name:* Integral® F–33. *Active ingredient:* Elicitor of Induced Systemic Resistance with *Bacillus pumilus* strain BU F–33 at 5%. *Proposed classification/use:* To elicit systemic changes in plants, thereby activating their own defense systems and culminating in enhanced protection against certain virus, fungi, and bacteria pathogens. *Contact:* Jeannine Kausch, (703) 347–8920, email address: *kausch.jeannine@epa.gov.*

5. *File Symbol:* 71840–RN. *Docket Number:* EPA–HQ–OPP–2012–0134. *Applicant:* Becker Underwood, Inc., 801 Dayton Avenue, P.O. Box 667, Ames, IA 50010. *Product name:* Methyl Jasmonate Technical Grade. *Active ingredient:* Biochemical Systemic Acquired Resistance (SAR) Inducer with Methyl Jasmonate at 98.7%. *Proposed classification/use:* Manufacturing use product. *Contact:* Chris Pfeifer, (703) 308–0031, email address: *pfeifer.chris@epa.gov.*

6. *File Symbol:* 71840–RR. *Docket Number:* EPA–HQ–OPP–2012–0134. *Applicant:* Becker Underwood, Inc., 801 Dayton Avenue, P.O. Box 667, Ames, IA 50010. *Product name:* Scimitar. *Active ingredient:* Biochemical SAR Inducer with Methyl Jasmonate at .037%. *Proposed classification/use:* Seed treatment/SAR inducer. *Contact:* Chris Pfeifer, (703) 308–0031, email address: *pfeifer.chris@epa.gov.*

7. *File Symbol:* 82940–G. *Docket Number:* EPA–HQ–OPP–2012–0251. *Applicant:* Ann M. Tillman, on behalf of Actagro, Pyxis Regulatory Consulting, Inc., 4110 136th St. NW., Gig Harbor, WA 98332. *Product name:* PM–4300 Organic Acids. *Active ingredient:* Plant growth regulator with Organic Acids derived from Leonardite at 18.5%. *Proposed classification/use:* For formulation purposes. *Contact:* Menyon Adams, (703) 347–8496, email address: *adams.menyon@epa.gov.*

8. *File Symbol:* 82940–E. *Docket Number:* EPA–HQ–OPP–2012–0251. *Applicant:* Ann M. Tillman, on behalf of Actagro, Pyxis Regulatory Consulting, Inc., 4110 136th St. NW., Gig Harbor, WA 98332. *Product name:* Phocon. *Active ingredient:* Plant growth regulator with Organic Acids derived from Leonardite at 12.0%. *Proposed classification/use:* Plant growth regulator uses. *Contact:* Menyon Adams, (703) 347–8496, email address: *adams.menyon@epa.gov.*

9. *File Symbol:* 88886–R. *Docket Number:* EPA–HQ–OPP–2012–0307. *Applicant:* Omega Protein, Inc., 2105 City West Boulevard, Suite 500, Houston, TX 77042–2823. *Product name:* SeaCide Technical. *Active ingredient:* Biochemical insecticide/miticide/fungicide with menhaden fish oil at 100%. *Proposed classification/use:* Manufacturing use product. *Contact:* Chris Pfeifer, (703) 308–0031, email address: *pfeifer.chris@epa.gov.*

10. *File Symbol:* 88886–E. *Docket Number:* EPA–HQ–OPP–2012–0307. *Applicant:* Omega Protein, Inc., 2105 City West Boulevard, Suite 500, Houston, TX 77042–2823. *Product name:* SeaCide. *Active ingredient:* Biochemical insecticide/miticide/fungicide with menhaden fish oil at 93%. *Proposed classification/use:* Foliar spray to control insects, mites and fungi. *Contact:* Chris Pfeifer, (703) 308–0031, email address: *pfeifer.chris@epa.gov.*

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 15, 2012.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2012–15554 Filed 6–26–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0425; FRL–9351–9]

Tralomethrin and Fenarimol; Registration Review Proposed Decisions; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's proposed registration review decisions for the pesticides listed in the table in Unit II.A. and opens a public comment period on the proposed decisions. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, that the pesticide can perform its intended function without unreasonable adverse effects on

human health or the environment. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before August 27, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number for the specific pesticide of interest provided in the table in Unit II.A. by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information, contact:* The Chemical Review Manager for the pesticide of interest identified in the table in Unit II.A.

For general information on the registration review program, contact: Kevin Costello, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; email address: *costello.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the chemical review manager listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What action is the agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's proposed registration review decisions for the pesticides shown in the following table, and opens a 60-day public comment period on the proposed decisions. Tralomethrin is a broad-spectrum Type II systemic pyrethroid ester insecticide that is registered for use in a variety of residential and commercial settings, and on a small number of agricultural crops including broccoli, cauliflower, cotton, lettuce, peanuts, and sunflowers.

Fenarimol is a member of the pyrimidine class of fungicides used for control of such pests as scab, powdery mildew, rusts, and leaf spot. Fenarimol inhibits fungal growth by adversely affecting the formation of the fungal sterol ergosterol, and is currently registered for use on fruit and nut crops such as apples, cherries, filberts (nonbearing), grapes, hops, pears, and pecans as well as on ornamental plants, trees, and grasses and turf lawns.

TABLE—REGISTRATION REVIEW PROPOSED FINAL DECISIONS

Registration review case name and No.	Pesticide docket ID No.	Chemical review manager, telephone number, email address
Tralomethrin, Case No. 7400	EPA–HQ–OPP–2010–0116	Wilhelmena Livingston, (703) 308–8025, *livingston.wilhelmena@epa.gov.*
Fenarimol, Case No. 7001	EPA–HQ–OPP–2006–0241	Garland Waleko, (703) 308–8049, *waleko.garland@epa.gov.*

The registration review docket for a pesticide includes earlier documents related to the registration review of the case. For example, the review opened with the posting of a Summary Document, containing a Preliminary Work Plan, for public comment. A Final Work Plan was posted to the docket following public comment on the initial docket.

The documents in the initial dockets described the Agency's rationales for not conducting additional risk assessments for the registration review of the pesticides included in the table in

Unit II.A. These proposed registration review decisions continue to be supported by those rationales included in documents in the initial dockets.

Following public comment, the Agency will issue final registration review decisions for products containing the pesticides listed in the table in Unit II.A. The registration review program is being conducted under congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. Section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, required EPA to establish by regulation procedures for reviewing pesticide registrations, originally with a goal of reviewing each pesticide's registration every 15 years to ensure that a pesticide continues to meet the FIFRA standard for registration. The Agency's final rule to implement this program was issued in August 2006 and became effective in October 2006, and appears at 40 CFR part 155, subpart C. The Pesticide Registration Improvement Act of 2003 (PRIA) was amended and extended in September 2007. FIFRA, as amended by PRIA in 2007, requires EPA to complete registration review decisions by October 1, 2022, for all pesticides registered as of October 1, 2007.

The registration review final rule at 40 CFR 155.58(a) provides for a minimum 60-day public comment period on all proposed registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed decision. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the docket for the pesticides included in the table in Unit II.A. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a ''Response to Comments Memorandum'' in the docket. The final registration review decision will explain the effect that any comments had on the decision and provide the Agency's response to significant comments.

Background information on the registration review program is provided at: *http://www.epa.gov/oppsrrd1/registration_review.* Links to earlier documents related to the registration review of these pesticides are provided at: *http://www.epa.gov/oppsrrd1/registration_review/reg_review_status.htm.*

B. What is the agency's authority for taking this action?

Section 3(g) of FIFRA and 40 CFR part 155, subpart C, provide authority for this action.

List of Subjects

Environmental protection, Administrative practice and procedure, Pesticides and pests, Tralomethrin, and Fenarimol.

Dated: June 5, 2012.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2012–15722 Filed 6–26–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreement are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012177.

Title: MSC/Maersk Line U.S.-Panama Space Charter Agreement.

Parties: Mediterranean Shipping Company S.A. and A.P. Moller-Maersk A/S, trading under the name Maersk Line.

Filing Party: Wayne R. Rohde, Esquire; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The agreement authorizes MSC to charter space to Maersk Line in the trade between ports in Panama and ports on the U.S. East and Gulf Coasts.

By Order of the Federal Maritime Commission.

Dated: June 22, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–15709 Filed 6–26–12; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

Bellcom, Inc. (NVO), 503 Commerce Park Drive, Suite E, Marietta, GA 30060. *Officers:* Cornelius U. Odinjor, President/CEO (Qualifying Individual). Alero A. Odinjor, Secretary. *Application Type:* New NVO License.

Benchmark Worldwide Logistics, Inc. dba Star Ocean Lines (NVO & OFF), 24900 South Route 53, Elwood, IL 60421. *Officers:* Melinda Dunsmoor, Vice President (Qualifying Individual). Cynthia J. McDonald, President. *Application Type:* QI Change.

Freight Logistics Services USA Forwarding Ltd (OFF), 15955 W. Hardy Street, #222, Houston, TX 77060. *Officer:* Paul M. Garcia, Managing Member (Qualifying Individual). *Application Type:* Name Change.

Global Atlantic Logistics LLC (OFF), 1901 SW 31st Avenue, Pembroke Park, FL 33009. *Officer:* Jeff Lelchuk, Managing Member (Qualifying Individual). *Application Type:* New OFF License.

Gold Cargo Freight, Corp (NVO & OFF), 8233 NW. 68th Street, Miami, FL 33166. *Officers:* Jorge A. Troconis, President (Qualifying Individual), Rossana Troconis, Director. *Application Type:* Add OFF Service.

Golden Bridge International, Inc. (NVO & OFF), 17800 Castleton Street, #263, City of Industry, CA 91748. *Officers:* Jin Zhao, President (Qualifying Individual). Qishn Shi, CFO. *Application Type:* Add OFF Service.

Griffin Transport Services, Inc. dba Legacy Supply Chain Services (NVO & OFF), 5360 Capital Ct., #100, Reno, NV 89502. *Officers:* Russ P. Romine, President (Qualifying Individual). Ron

Cain, CEO. *Application Type:* Trade Name Change and QI Change.

Intell SCM, LLC dba AWA Lines dba Island Cargo Support (NVO), 12911 Simms Avenue, Hawthorne, CA 90250. *Officer:* Andrew P. Scott, Manager (Qualifying Individual). *Application Type:* Trade Name Change.

Khan Energy Corporation dba Khan Logistics (NVO), 3340 Greens Road Bldg. C, #200, Houston, TX 77032. *Officers:* Joohyun Craig, Secretary (Qualifying Individual). Daniel Seo, President/Treasurer. *Application Type:* New NVO License.

Leeway Solution, Inc. (NVO & OFF), 3529 NW 82nd Avenue, Doral, FL 33122. *Officers:* Juan C. Vega, Vice President/Treasurer (Qualifying Individual). Maria A. Cadena, President/Secretary. *Application Type:* New NVO & OFF License.

Prana International Inc. (NVO & OFF), 4842 SW 144th CT., Miami, FL 33175. *Officer:* Jorge Lacayo,President/Secretary (Qualifying Individual). *Application Type:* Add OFF Service.

Pudong Prime Int'l Logistics, Inc. (NVO), 9660 Flair Drive, Suite 488, EL Monte, CA 91731. *Officers:* Jian Wang, President (Qualifying Individual). Huaihai Dong, Secretary. *Application Type:* New NVO License.

RD International Forwarder Corp. (NVO), Amelia Industrial Park, Lot C, Guaynabo, PR 00969. *Officers:* Rebeca Negron, President (Qualifying Individual). Daniel Freire, Vice President. *Application Type:* New NVO License.

Yujinco, Inc. dba MOA Express USA (NVO), 24646 Maple Lane, Harbor City, CA 90710. *Officers:* Byung Chan Lee, Chief Financial Officer/Secretary (Qualifying Individual). Jin Hyang Lee, CEO/President. *Application Type:* New NVO License.

Dated: June 22, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–15703 Filed 6–26–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the corresponding date shown below:

License Number: 1942F.
Name: Kosta International Corp.
Address: 3900 NW 79th Avenue, Suite 640, Miami, FL 33166.
Date Revoked: May 11, 2012.
Reason: Failed to maintain a valid bond.

License Number: 2980F.
Name: General Express Management Corporation dba G.E.M. Corp. dba G.E.M. Corporation.
Address: 2458 Center Gate Drive, Suite 102, Miramar, FL 33025.
Date Revoked: May 18, 2012.
Reason: Failed to maintain a valid bond.

License Number: 17329F.
Name: Mares-Shreve and Associates, Inc.
Address: 1035 Andover Park West, Suite 110, Tukwila, WA 98188.
Date Revoked: May 12, 2012.
Reason: Failed to maintain a valid bond.

License Number: 018981NF.
Name: Bekins Independence Forwarders, Inc. dba Bekins International.
Address: 330 South Mannheim Road, Hillside, IL 60192.
Date Revoked: May 9, 2012.
Reason: Failed to maintain a valid bond.

License Number: 022797N.
Name: Lupprian's Cargo Express, Inc.
Address: 700 Nicholas Blvd., Suite 401, Elk Grove Village, IL 60007.
Date Revoked: May 11, 2012.
Reason: Failed to maintain a valid bond.

Vern W. Hill,

Director, Bureau of Certification and Licensing.

[FR Doc. 2012–15700 Filed 6–26–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB With Request for Comments, Extension of Comment Period

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: *Background.* On June 4, 2012, the Board published in the **Federal Register**, a notice of final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). The notice requested public comment for 30 days to revise, without extension, Capital Assessments and Stress Testing information collection (FR Y–14A/Q/M). The comment period for this information collection notice expires on July 5, 2012.

Due to the range and complexity of the issues addressed in the information collection notice, the Board has determined that an extension of the end of the public comment period for an additional 30 days is appropriate. This action will allow interested persons additional time to analyze the proposed revisions and prepare their comments.

DATES: Comments must be submitted on or before August 6, 2012.

ADDRESSES: You may submit comments by any of the methods identified in the information collection notice.[1] Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer: Cynthia Ayouch, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer: Shagufta Ahmed, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION: The approved information collection was published in the **Federal Register** on June 4, 2012, to revise, without extension, the Capital Assessments and Stress Testing information collection (FR Y–14A/Q/M).

In recognition of the complexities of the issues addressed and the variety of considerations involved with implementation of the quarterly Operational Risk schedule, the Board requested that commenters respond to numerous questions related to the collection of legal reserves data. The information collection notice stated that the public comment period would close on July 5, 2012.[2]

The Board has received requests from the public for an extension of the comment period to allow for additional time for comments relating to the proposed collection of legal reserves data from the respondent BHCs. Due to the range and complexity of the issues

[1] *See* Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB With Request for Comments, 77 FR 32970 (June 4, 2012).

[2] *Id.*

addressed in the information collection notice, the Board has determined that an extension of the end of the public comment period for an additional 30 days is appropriate. Therefore, the Board is extending the comment period for the information collection notice from July 5, 2012 to August 6, 2012.

Board of Governors of the Federal Reserve System.

Dated: June 22, 2012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–15692 Filed 6–26–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–0281; 30-day notice]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–6974.

Proposed Project: Prevention Communication Formative Research—Revision—OMB No. 0990–0281—Office of Disease Prevention and Health Promotion.

Abstract: The information collected will be used as formative communication research to provide guidance to the development and implementation of its disease prevention and health promotion communication and education efforts, including the Physical Activity and Dietary Guidelines for Americans. It is necessary to obtain consumer input to better understand the informative needs, attitudes, and beliefs of the audience in order to tailor messages, as well as to assist with clarity, understandability, and acceptance of prototyped messages, materials, and online tools. This generic clearance request describes data collection activities involving a limited set of focus groups, individual interviews, Web-based concept and prototype testing, and usability and effects testing to establish a deeper understanding of the interests and needs of consumers and health intermediaries for disease prevention and health promotion information and tools. The program is requesting a three year clearance.

ESTIMATED ANNUALIZED BURDEN TABLE

Data collection task	Instrument/form name	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)	Total response burden (in hours)
In person, in-depth interviews (consumers with limited health literacy and/or Spanish speakers).	Screener	64	1	10/60	10.7
	Interview	16	1	1.5	24
	Confidentiality Agreement	16	1	5/60	1.3
In person, in-depth interviews (health intermediaries).	Screener	48	1	10/60	8
	Interview	16	1	1.5	24
	Confidentiality Agreement	16	1	5/60	1.3
In-person, in-depth interviews (public health professionals).	Screener	32	1	10/60	5.3
	Interview	16	1	1.5	24
	Confidentiality Agreement	16	1	5/60	1.3
Remote, in depth interviews (consumers with limited health literacy and/or Spanish speakers).	Screener	64	1	10/60	10.7
	Interview	16	1	1.5	24
	Confidentiality Agreement	16	1	5/60	1.3
Remote, in depth interviews (health intermediaries).	Screener	48	1	10/60	8
	Interview	16	1	1.5	24
	Confidentiality Agreement	16	1	5/60	1.3
Remote, in depth interviews (public health professionals).	Screener	48	1	10/60	8
	Interview	16	1	1.5	24
	Confidentiality Agreement	16	1	5/60	1.3
In person focus groups (consumers with limited health literacy).	Screener	280	1	10/60	46.7
	Focus Group	70	1	1.5	105
	Confidentiality Agreement	70	1	5/60	5.8

ESTIMATED ANNUALIZED BURDEN TABLE—Continued

Data collection task	Instrument/form name	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)	Total response burden (in hours)
In person focus groups (health intermediaries).	Screener	210	1	10/60	35
	Focus Group	70	1	1.5	105
	Confidentiality Agreement	70	1	5/60	5.8
In person focus groups (public health professionals).	Screener	140	1	10/60	23.3
	Focus Group	70	1	1.5	105
	Confidentiality Agreement	70	1	5/60	5.8
Remote focus groups (consumers with limited health literacy and/or Spanish speakers).	Screener	168	1	10/60	28
	Focus Group	42	1	1.5	63
	Confidentiality Agreement	42	1	5/60	3.5
Remote focus groups (health intermediaries).	Screener	126	1	10/60	21
	Focus Group	42	1	1.5	63
	Confidentiality Agreement	42	1	5/60	3.5
Remote focus groups (public health professionals).	Screener	84	1	10/60	14
	Focus Group	42	1	1.5	63
	Confidentiality Agreement	42	1	5/60	3.5
In person usability and prototype testing of materials (print and Web).	Screener	160	1	10/60	26.7
	Usability Test	40	1	1.5	60
	Confidentiality Agreement	40	1	5/60	3.3
Remote usability, prototype and concept testing.	Screener	200	1	10/60	.....
	Web-test	50	1	1	50
	Confidentiality Agreement	50	1	5/60	4.2
In person card sorting	Screener	120	1	10/60	20
	Card Sort	30	1	1.5	45
	Confidentiality Agreement	30	1	5/60	2.5
Web-based card sorting	Screener	400	1	10/60	66.6
	Card Sort	100	1	.5	50
	Confidentiality Agreement	100	1	5/60	8.3
Web-based message testing	Screener	0	0	0	0
	Web-test	115	1	1	115
	Confidentiality Agreement	115	1	5/60	9.6
Childhood Obesity Prevention communications campaign.	Online consumer surveys, a telephone survey and qualitative interviews.	921	1	.25	246
TOTAL					1642.9

Keith A. Tucker,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2012–15666 Filed 6–26–12; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Council on Alzheimer's Research, Care, and Services

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces the public meeting of the Advisory Council on Alzheimer's Research, Care, and Services (Advisory Council). Notice of these meetings is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). The Advisory Council on Alzheimer's Research, Care, and Services provides advice on how to prevent or reduce the burden of Alzheimer's disease and related dementias on people with the disease and their caregivers. The Advisory Council will discuss implementation of the National Plan to Address Alzheimer's Disease.

DATES: *Meeting Date:* July 23, 2012 from 9:00am to 4:30pm EDT.

ADDRESSES: The meeting will be held at the U.S. Department of Health and Human Services, 200 Independence Avenue SW., Room 800, Washington, DC 20201.

Comments: Time is allocated on the agenda to hear public comments. In lieu of oral comments, formal written comments may be submitted for the record to Jane Tilly, DrPH, OASPE, 200 Independence Avenue SW., Room 424E, Washington, DC 20201. Comments may also be sent to *napa@hhs.gov.* Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Jane Tilly, DrPH (202) 205–8999, *jane.tilly@hhs.gov.* Note: Seating may be limited. Those wishing to attend the meeting must send an email to *napa@hhs.gov* and put ''July 23 meeting attendance'' in the Subject line by Friday, July 13, 2012, so that their

names may be put on a list of expected attendees and forwarded to the security officers at the Department of Health and Human Services. Any interested member of the public who is a non-U.S. citizen should include this information at the time of registration to ensure that the appropriate security procedure to gain entry to the building is carried out. Although the meeting is open to the public, procedures governing security and the entrance to Federal buildings may change without notice.

SUPPLEMENTARY INFORMATION: Topics of the Meeting: The Advisory Council will discuss implementation of the National Plan to Address Alzheimer's Disease. Procedure and Agenda: This meeting is open to the public.

Authority: 42 U.S.C. 11225; Section 2(e)(3) of the National Alzheimer's Project Act. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: June 20, 2012.

Sherry Glied,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 2012–15625 Filed 6–26–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Online Application Order Form for Products from the Healthcare Cost and Utilization Project (HCUP).'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by August 27, 2012.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Online Application Order Form for Products From the Healthcare Cost and Utilization Project (HCUP)

The Healthcare Cost and Utilization Project (HCUP, pronounced ''H-Cup'') is a vital resource helping AHRQ achieve its research agenda, thereby furthering its goal of improving the delivery of health care in the United States. HCUP is a family of health care databases and related software tools and products developed through a Federal-State-Industry partnership and sponsored by AHRQ. HCUP includes the largest collection of longitudinal hospital care data in the United States, with all-payer, encounter-level information beginning in 1988. The HCUP databases are annual files that contain anonymous information from hospital discharge records for inpatient care and certain components of outpatient care, such as emergency care and ambulatory surgeries. The project currently releases a variety of databases created for research use on a broad range of health issues, including cost and quality of health services, medical practice patterns, access to health care programs, and outcomes of treatments at the national, State, and local market levels. HCUP also produces a large number of software tools to enhance the use of administrative health care data for research and public health use. Software tools use information available from a variety of sources to create new data elements, often through sophisticated algorithms, for use with the HCUP databases.

HCUP's objectives are to:

- Create and enhance a powerful source of national, state, and all-payer health care data.
- Produce a broad set of software tools and products to facilitate the use of HCUP and other administrative data.
- Enrich a collaborative partnership with statewide data organizations (that voluntarily participate in the project) aimed at increasing the quality and use of health care data.
- Conduct and translate research to inform decision making and improve health care delivery.

The HCUP releases six types of databases for public research use:

(1) The Nationwide Inpatient Sample (NIS) is the largest all-payer inpatient care database in the United States, containing data from approximately 8 million hospital stays from roughly 1,000 hospitals; this approximates a 20-percent stratified sample of U.S. community hospitals. NIS data releases are available for purchase from the HCUP Central Distributor for data years beginning in 1988.

(2) The Kids' Inpatient Database (KID) is the only all-payer inpatient care database for children in the United States. The KID was specifically designed to permit researchers to study a broad range of conditions and procedures related to child health issues. The KID contains a sample of over 3 million discharges for children age 20 and younger from more than 3,500 U.S. community hospitals.

(3) The Nationwide Emergency Department Sample (NEDS) is the largest all-payer ED database in the United States. It is constructed to capture information both on ED visits that do not result in an admission and on ED visits that result in an admission to the same hospital. The NEDS contains more than 25 million unweighted records for ED visits at about 1,000 U.S. community hospitals and approximates a 20-percent stratified sample of U.S. hospital-based EDs. Files are available beginning with data year 2006.

(4) The State Inpatient Databases (SID) contain the universe of inpatient discharge abstracts from data organizations in 46 States that currently participate in the SID. Together, the SID encompasses approximately 97 percent of all U.S. community hospital discharges. Most States that participate in the SID make their data available for purchase through the HCUP Central Distributor. Files are available beginning with data year 1990.

(5) The State Ambulatory Surgery Databases (SASD) contain data from ambulatory care encounters in hospital-affiliated (and sometimes freestanding) ambulatory surgery sites. Currently, 29 States participate in the SASD. Files are available beginning with data year 1997.

(6) The State Emergency Department Databases (SEDD) contain data from hospital-affiliated emergency department (ED) abstracts for visits that do not result in a hospitalization. Currently, 29 States participate in the SEDD. Files are available beginning with data year 1999.

To support AHRQ's mission to improve health care through scientific research, HCUP databases and software tools are disseminated to users outside of the Agency through a mechanism known as the HCUP Central Distributor. The HCUP Central Distributor assists

qualified researchers to access uniform research data across multiple states with the use of one application process. The HCUP databases disseminated through the Central distributor are referred to as ''restricted access public release files;'' that is, they are publicly available, but only under restricted conditions.

HCUP databases are released to researchers outside of AHRQ after the completion of required training and submission of an application that includes a signed HCUP Data Use Agreement (DUA). In addition, before restricted access public release state-level databases are released, the user is asked for a brief description of their research to ensure that the planned use is consistent with HCUP policies and with the HCUP data use requirements. Fees are set for databases released through the HCUP Central Distributor depending on the type of database. The fee for sale of state-level data is determined by each participating Statewide Data Organization and reimbursed to those organizations. This project is being conducted by AHRQ through its contractor and subcontractor, Thomson Reuters and Social & Scientific Systems, Inc., pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the outcomes, cost, cost-effectiveness, and use of health care services and access to such services. (42 U.S.C. 299a(a)(3).)

Method of Collection

This information collection request is for the activities associated with completing an online application form to request HCUP data, not the collection of health care data for HCUP databases. The activities associated with the HCUP online application include:

(1) HCUP Application Form. All persons wanting access to the HCUP databases must complete an application package. Each unique database has a unique application package. All application packages are available for downloading at *http://www.hcup-us.ahrq.gov/tech_assist/centdist.jsp.*

(2) HCUP Data Use Agreement Training. All persons wanting access to the HCUP databases must complete this online training course. The purpose of the training is to emphasize the importance of data protection, reduce the risk of inadvertent violations, and describe the individual's responsibility when using HCUP data. The training course can be accessed and completed online at *http://www.hcup-us.ahrq.gov/tech_assist/dua.jsp.*

(3) HCUP Data Use Agreement (DUA). All persons wanting access to the HCUP databases must sign a data use agreement. Each database has a unique DUA; an example DUA for the Nationwide Inpatient Sample database is available at *http://www.hcup-us.ahrq.gov/team/NISDUA.jsp.*

Information collected in the HCUP Application Order Form will be used for two purposes only:

1. Business Transaction: HCUP databases and software are currently delivered on disk and shipped to users who have completed the application process. Contact information is used for shipping the data on disk (or any other media used in the future). AHRQ policy and current agreements with Statewide Data Organizations contributing data to HCUP prohibit providing access to the data via the Internet or email.

2. Enforcement of the HCUP Data Use Agreement (DUA): The HCUP DUA contains several restrictions on use of the data. Most of these restrictions have been put in place to safeguard the privacy of individuals and establishments represented in the data. For example, data users can only use the data for research, analysis, and aggregate statistical reporting and are prohibited from attempting to identify any persons in the data. Contact information on HCUP Data Use Agreements is retained in the event that a violation of the DUA takes place.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden associated with the applicants' time to order any of the HCUP databases. An estimated 1,200 persons will order HCUP data annually. Each of these persons will complete an application (10 minutes), the DUA training (15 minutes) and a DUA (5 minutes). The total burden is estimated to be 600 hours annually.

Exhibit 2 shows the estimated annualized cost burden associated with the applicants' time to order HCUP data. The total cost burden is estimated to be $21,408 annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
HCUP Application Form	1,200	1	0/60	200
HCUP DUA Training	1,200	1	15/60	300
HCUP DUA	1,200	1	5/60	100
Total	3,600	na	na	600

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
HCUP Application Form	1,200	200	$35.68	$7,136
HCUP DUA Training	1,200	300	35.68	10,704
HCUP DUA	1,200	100	35.68	3,568
Total	3,600	600	na	21,408

* Based upon the mean of the average wages for Life Scientists, All Other (19–1099), National Compensation Survey: Occupational wages in the United States May 2011, ''U.S. Department of Labor, Bureau of Labor Statistics.''

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated total and annualized cost to process HCUP database applications and maintain the ordering system over the 3 years covered by this information collection request. It is estimated to cost $17,237 annually to operate and maintain the ordering system.

Exhibit 3. Estimated Total and Annualized Cost

Cost component	Total cost	Annualized cost
Order Review	$14,493	$4,831
Monthly Updates—Product Catalog	1,857	619
System Maintenance	13,820	4,607
Customer Inquiries	4,483	1,495
Management/Troubleshooting	17,058	5,689
Total	51,711	17,237

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: June 19, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012–15615 Filed 6–26–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), the Agency for Healthcare Research and Quality (AHRQ) announces this meeting of scientific peer review groups. The subcommittee listed below is a part of the Agency's Health Services Research Initial Review Group Committee.

The subcommittee meeting will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications are to be reviewed and discussed at this meeting. These discussions are likely to involve information concerning individuals associated with the applications, including assessments of their personal qualifications to conduct their proposed projects. This information is exempt from mandatory disclosure under the above-cited statutes.

Name of Subcommittee: Health Care Research Training (2) Virtual Review.

Date: July 12, 2012 (Open from 1:00 p.m. to 1:15 p.m. on July 12 and closed for remainder of the meeting).

Place: Agency for Healthcare Research and Quality, John Eisenberg Building, 540 Gaither Road, OEREP Conference Room, Rockville, MD 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of the meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Suite 2000, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: June 14, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012–15611 Filed 6–26–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Delisting for Cause for Medical Informatics

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Delisting.

SUMMARY: AHRQ has delisted Medical Informatics as a Patient Safety Organization (PSO) due to its failure to correct a deficiency. The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act) authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity is to conduct activities to improve patient safety and the quality of health care delivery. HHS issued the Patient Safety and Quality Improvement Final Rule (Patient Safety Rule) to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule relating to the listing and operation of PSOs.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12:00 Midnight ET (2400) on June 1, 2012.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: *http://www.pso.AHRQ.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Eileen Hogan, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *pso@AHRQ.hhs.qov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act, Public Law 109–41, 42 U.S.C. 299b–21—b–26, provides for the formation of PSOs, which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety Rule, 42 CFR Part 3, authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found no longer to meet the requirements of the Patient Safety Act and Patient Safety Rule. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs.

Medical Informatics failed to respond to a Notice of Preliminary Finding of Deficiency sent by AHRQ pursuant to 42 CFR 3.108(a)(2) and a Notice of Proposed Revocation and Delisting sent by AHRQ pursuant to 42 CFR 3.108(a)(3)(iii)(C) which found that Medical Informatics failed to have, within every 24-month period following the PSO's date of initial listing, at least two bona fide contracts with different providers for the purpose of receiving and reviewing patient safety work product, and to notify AHRQ no later than 45 calendar days prior to the last day of the pertinent 24-month period that the PSO has met this requirement. Medical Informatics did not exercise its opportunity to be heard in writing to respond to the deficiencies specified in the notices, and has not provided any evidence of a good faith effort to correct the deficiency. Accordingly, AHRQ has revoked the listing of Medical Informatics, PSO number P0086, a component entity of Medical Informatics, LLC, effective at 12:00 Midnight ET (2400) on June 1, 2012.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.clov/index.html.*

Dated: June 19, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012–15612 Filed 6–26–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–12–0214]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Kimberly S. Lane, at 1600 Clifton Road, MS D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Health Interview Survey (NHIS), (OMB No. 0920–0214)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability of the population of the United States.

The annual National Health Interview Survey is a major source of general statistics on the health of the U.S. population and has been in the field continuously since 1957. Clearance is sought for three years, to collect data for 2013, 2014, and 2015. This voluntary household-based survey collects demographic and health-related information on a nationally representative sample of persons and households throughout the country. Personal identification information is requested from survey respondents to facilitate linkage of survey data with health related administrative and other records. Each year we collect information from approximately 55,000 households, which would contain about 137,500 individuals.

Information is collected using computer assisted personal interviews (CAPI). A core set of data is collected each year while sponsored supplements vary from year to year. For 2013, supplement information will be collected on cancer screening, asthma, immune suppression, arthritis, epilepsy, and sexual identity. In addition, a Web-based multimode follow-back survey will be conducted from sample adult respondents from the 2012 NHIS. The follow-back survey will focus on adult health, health care access and use, and health insurance coverage and will include Web, telephone, and mail interviews.

In accordance with the 1995 initiative to increase the integration of surveys within the Department of Health and Human Services, respondents to the NHIS serve as the sampling frame for the Medical Expenditure Panel Survey conducted by the Agency for Healthcare Research and Quality. The NHIS has long been used by government, university, and private researchers to evaluate both general health and specific issues, such as cancer, diabetes, and access to health care. It is a leading source of data for the Congressionally-mandated ''Health US'' and related publications, as well as the single most important source of statistics to track progress toward the National Health Promotion and Disease Prevention Objectives, ''Healthy People 2020.''

There is no cost to the respondents other than their time.

ANNUALIZED BURDEN TABLE

Questionnaire (respondent)	Number of respondents	Number of responses per respondent	Average burden per respondent in hours	Total burden in hours
Screener Questionnaire	12,000	1	5/60	1,000

ANNUALIZED BURDEN TABLE—Continued

Questionnaire (respondent)	Number of respondents	Number of responses per respondent	Average burden per respondent in hours	Total burden in hours
Family Core (adult family member)	55,000	1	23/60	21,083
Adult Core (sample adult)	44,000	1	15/60	11,000
Child Core (adult family member)	17,000	1	10/60	2,833
Child/Teen Record Check (medical provider)	10,000	1	5/60	833
Supplements (adult family member)	60,000	1	12/60	12,000
Multi-mode study (adult family Member)	5,000	1	30/60	2,500
Reinterview Survey	5,000	1	5/60	417
Total Burden Hours				51,666

Dated: June 21, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–15749 Filed 6–26–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2012–0004]

Draft Public Health Action Plan—A National Public Health Action Plan for the Detection, Prevention, and Management of Infertility

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Extension of public comment period.

SUMMARY: On May 16, 2012, the Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) published a notice in the **Federal Register** requesting public comment on the draft *National Public Health Action Plan for the Detection, Prevention, and Management of Infertility* (77 FR 28883). Written and electronic comments were to be received on or before June 15, 2012. HHS/CDC has received a request asking for a 30 day extension of the comment period. In consideration of this request, HHS/CDC is extending the comment period to July 16, 2012.

DATES: Written comments must be received on or before July 16, 2012. Please refer to **SUPPLEMENTARY INFORMATION** for additional information.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2012–0004 by any of the following methods:

Internet: Access the Federal eRulemaking portal at *http://www.regulations.gov.* Follow the instructions for submitting comments.

Mail: Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Division of Reproductive Health, Attn: National Public Health Action Plan for the Detection, Prevention, and Management of Infertility, Docket No. CDC–2012–0004, 4770 Buford Highway NE., Mailstop K–34, Atlanta, Georgia 30341.

All relevant comments received will be posted publicly without change, including any personal or proprietary information provided. To download an electronic version of the plan, please access *http://www.regulations.gov.*

Written comments, identified by Docket No. CDC–2012–0004, will be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m., Eastern Daylight Time, at 2900 Woodcock Blvd., Atlanta, Georgia 30341. Please call ahead to (770) 488–5200 and ask for a representative from the Division of Reproductive Health to schedule your visit. Comments may also be viewed at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Denise Jamieson, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Division of Reproductive Health, 4770 Buford Highway NE., Mailstop K–34, Atlanta, Georgia 30341, (770) 488–5200.

SUPPLEMENTARY INFORMATION: In 2007, a CDC-wide ad hoc workgroup formed to examine the full scope of infertility activities across the agency. This workgroup conducted an assessment to identify gaps and opportunities in public health surveillance, research, communications, programs, and policy development, which led to the 2010 publication of a white paper outlining the need for a national plan, with a public health focus, on infertility prevention, detection, and management. In consultation with many governmental and nongovernmental partners, CDC developed the National Public Health Action Plan for the Detection, Prevention and Management of Infertility. Addressing both male and female infertility, the plan outlines and summarizes actions needed to promote, preserve, and restore the ability of women in the United States to conceive, carry a pregnancy to term, and deliver a healthy infant. This goal extends beyond simply addressing the inability to conceive but also focuses on reducing the burden of impaired fecundity by promoting behaviors that maintain fertility; by promoting prevention, early detection, and treatment of medical conditions; and by reducing environmental and occupational threats to fertility. Given the public health focus of this action plan, promoting healthy pregnancy outcomes associated with treating and managing infertility is also important, as is improving the efficacy and safety of infertility treatment.

The document is organized into three chapters: ''Detection of Infertility,'' ''Prevention of Infertility,'' and ''Management of Infertility.'' Each chapter addresses the topic's public health importance, existing challenges, and opportunities for action to decrease the impact of infertility on the public's health. The suggested opportunities provide federal and other government agencies, professional and consumer organizations, and other partners and stakeholders a foundation and platform to work together to decrease the burden of infertility in the United States.

Since the draft plan was published on May 16, 2012, HHS/CDC has received a request to extend the comment period by an additional 30 days. HHS/CDC is committed to affording the public a meaningful opportunity to comment on the draft plan and welcomes comments.

HHS/CDC has posted the original notice and all related materials on *www.regulations.gov.*

Dated: June 20, 2012.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2012–15642 Filed 6–26–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–033–A]

Revised Document Posted: NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings 2012

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of issuance of Final Guidance Publication.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the publication of the following document entitled ''NIOSH List of Antineoplastic and Other Hazardous Drugs in Healthcare Settings 2012.'' NIOSH is making available a copy of Appendix A at *http://www.cdc.gov/niosh/docs/2012-150.*

Background: The NIOSH Alert: NIOSH published Preventing Occupational Exposures to Antineoplastic and Other Hazardous Drugs in Health Care Settings in September 2004 (*http://www.cdc.gov/niosh/docs/2004-165/*). Appendix A of this Alert defined hazardous drugs and provided a list of drugs that were considered hazardous and required special handling. In 2010, NIOSH published an update to this list (*http://www.cdc.gov/niosh/docs/2010-167/*). Since publishing the 2010 update to the list, NIOSH reviewed approximately 70 new drugs that received FDA approval and approximately 180 drugs that received new special warnings (usually black box warnings) based on reported adverse effects in patients covering the time period from October 2007 to December 2009. From this list of approximately 250 drugs, NIOSH determined 26 drugs to have one or more characteristics of a hazardous drug. In addition, NIOSH removed 15 drugs from the 2012 list because they did not meet the NIOSH definition, were no longer available in the U.S or were regulated by other government entities. NIOSH published this preliminary list for comment in NIOSH Docket Number 190.

After expert panel review, public review and comment, and review of the scientific literature, NIOSH has developed a revised list of hazardous drugs. Along with drugs initially identified in the 2010 Hazardous Drug List, NIOSH is adding a total of 26 new drugs to the 2012 NIOSH List of Hazardous Drugs and is deleting 15 drugs.

This guidance document does not have the force and effect of law.

FOR FURTHER INFORMATION CONTACT: Barbara MacKenzie, NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, MS–C26, Cincinnati, OH 45226, Telephone (513) 533–8132, email *hazardousdrugs@cdc.gov.*

Dated: June 20, 2012.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2012–15651 Filed 6–26–12; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–359 and –360]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension without change of a currently approved collection. *Title of Information Collection:* Comprehensive Outpatient Rehabilitation Facility (CORF) Eligibility and Survey Forms. *Use:* CMS–359 serves as the application for facilities wishing to participate in the Medicare/Medicaid program as CORFs. The form initiates the process for obtaining a decision as to whether the conditions of participation are met. It also promotes data reduction (key punching) or introduction to and retrieval from the Medicare/Medicaid Automated Certification System, ASPEN, by the CMS Regional Offices (ROs). Should any question arise regarding the structure of the organization, this information is readily available without going through the process of completing the form again.

CMS–360 is used by the State survey agency to record data collected to determine provider compliance with individual conditions of participation and to report it to the Federal government. CMS has the responsibility and authority for certification decisions which are based on provider compliance with the conditions of participation. The information needed to make these decisions is available to CMS only through use of information abstracted from the survey checklists. The form is primarily a worksheet designed to facilitate keypunching into the ASPEN by the State Agency after the survey is completed.

Form Number: CMS–359 (CORF Eligibility Form) and CMS–360 (CORF Survey Report Form); OCN 0938–0267. *Frequency:* Occasionally. *Affected Public:* Private Sector (Business or other for-profits). *Number of Respondents:* 295. *Total Annual Responses:* 42. *Total Annual Hours:* 137. (For policy questions regarding this collection contact Georgia Johnson at 410–786–6859. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must

be submitted in one of the following ways by *August 27, 2012:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 22, 2012.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–15694 Filed 6–26–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10429]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection (request for a new OMB control number). *Title of Information Collection:* Surveys of Physicians and Home Health Agencies to Assess Access Issues for Specific Medicare Beneficiaries as Defined in Section 3131(d) of the ACA. *Use:* This collection is part of a study called for under section 3131(d) of the Patient Protection and Affordable Care Act (ACA). The study is focused on two major issues: (1) supporting CMS' efforts to improve payment accuracy and (2) understanding issues of access for the ACA populations under the existing home health prospective payment system. The study team's analytic plan focuses on understanding payment accuracy for the specific study populations through claims and cost data analyses, which will reflect payments and costs for patients who have gained access to home health care. In order to understand access issues for the ACA defined populations, the study team proposes using survey instruments to better understand the characteristics of Medicare beneficiaries who are not able to gain access to or have experienced delays in gaining access to home health services.

As a new collection, the information collected is expected to support CMS' efforts to improve the home health prospective payment system payment accuracy for vulnerable populations and thereby ensure the payment system does not inadvertently cause avoidable access problems. The questions are designed to provide insights into access issues for vulnerable populations that cannot be learned through analyses of administrative data.

Form Number: CMS–10429 (OCN: 0938–New). *Frequency:* Once. *Affected Public:* Private Sector (business or other for-profit and not-for-profit institutions). *Number of Respondents:* 875. *Total Annual Responses:* 292. *Total Annual Hours:* 73. (For policy questions regarding this collection contact Kristy Chu at 410–786–8953. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *July 27, 2012.* OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, Email: *OIRA_submission@omb.eop.gov.*

Dated: June 22, 2012.

Martique Jones,

Director, Regulations Development Group, Division-B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–15693 Filed 6–26–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Parents and Children Together.

OMB No.: 0970–0403.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services is proposing an information collection activity as part of an evaluation of healthy marriage and responsible fatherhood grant programs. The evaluation study title is Parents and Children Together (PACT).

A 60-Day **Federal Register** Notice was published for this study on December 20, 2011. This Notice described all components of the study and, therefore, we request to waive additional 60-Day **Federal Register** Notices. This 30-Day **Federal Register** Notice covers (a) instruments for the impact study baseline survey (including an introductory script and the baseline survey itself), and (b) site Management Information Systems (MIS).

This information collection request is specific to Responsible Fatherhood programs that may be evaluated (requests specific to Healthy Marriage programs will be separate). The baseline survey will collect data related to such domains as father involvement, coparenting, parenting, marriage and romantic relationships, and employment. The information from the baseline survey will be used by ACF for, among other things, describing the populations served and determining the comparability of program and control groups. Information on participant entry, participation, and exit from the program will be entered into the MIS system.

Respondents: Baseline information will be collected from all fathers prior to random assignment; the introductory script will be read by program staff to fathers applying to the program. Program staff will record information on the services received by study

participants in the study Management Information System (MIS).

Annual Burden Estimates

The following table provides the combined burden estimates for the previously-approved field data collection instrument, and the current request. Burden for all instruments is annualized over three years.

Activity/respondent	Annual number of respondents	Number of responses per respondent	Average burden per response (minutes)	Total annual burden hours
Collection of Field Data (Approved April 20, 2012)				
Selecting Study Grantees Discussions/grantee and partner organization staff	50	1	60	50
Introductory Script and Baseline Survey (Currently Requested)				
Introductory Script:				
(1) Grantee staff	30	70.2	10	351
(2) Program applicants	2,105	1	10	351
Baseline Survey:				
(1) Study participants	2,000	1	30	1.000
Study MIS (Currently Requested)				
Study MIS:				
(1) Grantee staff	30	2,517	2	2,517

Estimated Total Annual Burden Hours: 4,269.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA SUBMISSION@OMB.E0P.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Steven M. Hanmer,

Reports Clearance, Officer.

[FR Doc. 2012–15440 Filed 6–26–12; 8:45 am]

BILLING CODE 4184–37–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0747]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Waivers of In Vivo Demonstration of Bioequivalence of Animal Drugs in Soluble Powder Oral Dosage Form and Type A Medicated Articles

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Waivers of In Vivo Demonstration of Bioequivalence of Animal Drugs in Soluble Powder Oral Dosage Form and Type A Medicated Articles'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

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: On March 19, 2012, the Agency submitted a proposed collection of information entitled ''Waivers of In Vivo Demonstration of Bioequivalence of Animal Drugs in Soluble Powder Oral Dosage Form and Type A Medicated Articles'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0575. The approval expires on June 30, 2015. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: June 20, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–15721 Filed 6–26–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0357]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Device Decision Analysis: A Risk-Tolerance Pilot Study

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 July 27, 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 ''Medical Device Decision Analysis: A Risk-Tolerance Pilot Study.'' Also include the FDA 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: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Device Decision Analysis: A Risk-Tolerance Pilot Study—(OMB Control Number 0910–New)

I. Background

A recent study of obesity indicates that 35.5 percent of men and 35.8 percent of women in America reported being obese in 2010. This represents an increase from 27.5 percent and 33.4 percent in 2000 for men and women, respectively (Ref. 1). People who are obese are more likely to suffer from diabetes, cardiovascular disease, respiratory and metabolic disease, and sleep apnea, as well as other physical and psychological disabilities. By some estimates, as much as $140 billion were spent in 2008 to treat obesity-related diseases (Ref. 2). Studies have shown that weight loss can significantly reduce the burden of obesity-related comorbidities (Refs. 3 and 4), and that weight lost as a result of laparoscopic banding or other weight-loss surgeries positively impacts quality of life and burden of disease (Refs. 5 through 7). However, like any surgical procedure, these surgeries are associated with substantial risks, including risks of potentially life-threatening events (Ref. 6), that patients and physicians must weigh against any potential benefits when making an informed treatment decision.

With the assistance of advisory panels, FDA determines the acceptable risk threshold of a medical intervention against its effectiveness as demonstrated in clinical evidence. In addition, individual patients and patient-advocacy groups anecdotally express their opinions about their needs and tolerance for risks to FDA through letters and public testimonies during advisory panel meetings. To evaluate the scientific validity of systematically eliciting patient perspectives on outcomes associated with weight-loss devices, the Agency requests approval of a pilot survey to quantify obesity patients' benefit-risk preferences.

The choice-format preference-elicitation survey will ask obese individuals (with a body mass index of 30 kg/m^2 or above) to evaluate a series of choices between pairs of hypothetical medical devices. Each hypothetical device will be defined by the amount and duration of weight loss, side effects, risks associated with hypothetical weight-loss devices, and the effect of the device on weight-related comorbidities. The survey was developed using findings from a literature review of the outcomes associated with weight-loss devices, interviews with obesity patients, and expert opinion.

An invitation to the online survey will be sent to a sample of 1,000 obese adults in the United States. Among the adults who receive the invitation, about 600 are expected to complete the consent form and about 450 are expected to qualify for the study and complete the survey in full. In addition to the choice-format questions, the survey also will collect information on respondent demographics, disease history, and weight-management history. There is no cost to respondents other than about 25 minutes of their time.

Final results will provide an estimate of the maximum levels of various treatment-related risks that obesity patients would be willing to accept to achieve specific levels of weight loss or improvements in weight-related diseases. These results will be used to investigate the viability of choice-format surveys as a way to quantify patients' risk tolerance for the therapeutic benefits of weight-loss devices.

In the **Federal Register** of April 19, 2012 (77 FR 23484), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Survey instrument	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Survey invitation	1,000	1	1,000	0.03	30
Consent form	700	1	700	0.03	21
Full survey	450	1	450	0.42	189
Total					240

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

II. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Ogden, C.L., M.D. Carroll, B.K. Kit, and K.M. Flegal, ''Prevalence of Obesity and Trends in Body Mass Index Among U.S. Children and Adolescents, 1999–2010,'' *Journal of the American Medical Association,* vol. 307, no. 5, pp. 483–490, 2012.

2. Finkelstein, E.A., J.G. Trogdon, J.W. Cohen, and W. Dietz, ''Annual Medical Spending Attributable to Obesity: Payer- and Service-Specific Estimates,'' *Health Affairs,* vol. 28, no. 5, pp. w822–w831, 2009.

3. Dhabuwala, A., R.J. Cannan, and R.S. Stubbs, ''Improvement in Comorbidities Following Weight Loss From Gastric Bypass Surgery,'' *Obesity Surgery,* vol. 10, pp. 428–435, 2000.

4. Sjöström, L., A. Lindroos, M. Peltonen, et al., ''Lifestyle, Diabetes, and

Cardiovascular Risk Factors 10 Years After Bariatric Surgery,'' *The New England Journal of Medicine,* vol. 351, no. 26, pp. 2683–2693, 2004.

5. Dixon, J.B., M.E. Dixon, and P.E. O'Brien, ''Quality of Life After Lap-Band Placement: Influence of Time, Weight Loss, and Comorbidities,'' *Obesity Research,* vol. 9, no. 11, pp. 713–721, 2001.

6. Buchwald, H., Y. Avidor, E. Braunwald et al., ''Bariatric Surgery: A Systematic Review and Meta-Analysis,'' *Journal of the American Medical Association,* vol. 292, no. 14, pp. 1724–1728, 2004.

7. Dixon, J.B., M.J. Hayden, G.W. Lambert, et al., ''Raised CRP Levels in Obese Patients: Symptoms of Depression Have an Independent Positive Association,'' *Obesity,* vol. 16, no. 9, pp. 2010–2015, 2008.

Dated: June 22, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–15720 Filed 6–26–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0369]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Regulations Under the Federal Import Milk Act

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 July 27, 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 0910–0212. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400T, Rockville, MD 20850, 301–796–5733, *domini.bean@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.

Regulations Under the Federal Import Milk Act—21 CFR Part 1210 (OMB Control Number 0910–0212)—Extension

Under Federal Import Milk Act (FIMA) (21 U.S.C. 141–149), milk or cream may be imported into the United States only by the holder of a valid import milk permit (21 U.S.C. 141). Before such permit is issued: (1) All cows from which import milk or cream is produced must be physically examined and found healthy; (2) if the milk or cream is imported raw, all such cows must pass a tuberculin test; (3) the dairy farm and each plant in which the milk or cream is processed or handled must be inspected and found to meet certain sanitary requirements; (4) bacterial counts of the milk at the time of importation must not exceed specified limits; and (5) the temperature of the milk or cream at time of importation must not exceed 50 °F (21 U.S.C. 142).

FDA's regulations in part 1210 (21 CFR part 1210) implement the provisions of FIMA. Sections 1210.11 and 1210.14 require reports on the sanitary conditions of, respectively, dairy farms and plants producing milk and/or cream to be shipped to the United States. Section 1210.12 requires reports on the physical examination of herds, while § 1210.13 requires the reporting of tuberculin testing of the herds. In addition, the regulations in part 1210 require that dairy farmers and plants maintain pasteurization records (§ 1210.15) and that each container of milk or cream imported into the United States bear a tag with the product type, permit number, and shipper's name and address (§ 1210.22). Section 1210.20 requires that an application for a permit to ship or transport milk or cream into the United States be made by the actual shipper. Section 1210.23 allows permits to be granted based on certificates from accredited officials.

In the **Federal Register** of April 20, 2012 (77 FR 23732), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one letter in response to the notice. The letter contained one relevant comment, while additional comments were outside the scope of the four collection of information topics on which the notice solicits comments and will not be discussed in this document.

(Comment 1) One comment suggested that ''huge bureaucratic expenses created by the usa [sic] for 2 forms'' for taxpayers.

(Response) While FDA appreciates the comment, the commenter did not specify which two forms might create an undue expense for taxpayers. Each form relating to this information collection request is necessary for the proper performance of FDA's functions. FDA has examined each form related to this information collection request to assure its efficiency.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
1210.11	FDA 1996/Sanitary inspection of dairy farms	2	200	400	1.5	600
1210.12	FDA 1995/Physical examination of cows	1	1	1	0.5	0.5
1210.13	FDA 1994/Tuberculin test	1	1	1	0.5	0.5
1210.14	FDA 1997/Sanitary inspections of plants	2	1	2	2	4
1210.20	FDA 1993/Application for permit	2	1	2	0.5	1
1210.23	FDA 1815/Permits granted on certificates	2	1	2	0.5	1

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

21 CFR Section	Form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Total ..	.....	.....	.....	.....	.....	607

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

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
1210.15	2	1	2	0.05	0.10

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

The estimated number of respondents and hours per response are based on FDA's experience with the import milk permit program and the average number of import milk permit holders over the past 3 years. FDA estimates that 2 respondents will submit approximately 200 Form FDA 1996 reports annually, for a total of 600 responses. FDA estimates the reporting burden to be 1.5 hours per response, for a total burden of 607 hours.

The Secretary of Health and Human Services has the discretion to allow Form FDA 1815, a duly certified statement signed by an accredited official of a foreign government, to be submitted in lieu of Forms FDA 1994 and 1995. To date, Form FDA 1815 has been submitted in lieu of these forms. Because FDA has not received any Forms FDA 1994 and 1995 in the last 3 years, the Agency estimates no more than one will be submitted annually. FDA estimates the reporting burden for each to be 0.5 hours per response for a total burden reporting burden of 0.5 hours each.

FDA estimates that two respondents will submit one Form FDA 1997 report annually, for a total of two responses. FDA estimates the reporting burden to be 2.0 hours per response, for a total burden of 4 hours. FDA estimates that two respondents will submit one Form FDA 1993 report annually, for a total of two responses. FDA estimates the reporting burden to be 0.5 hours per response, for a total burden of 1 hour. FDA estimates that two respondents will submit one Form FDA 1815 report annually, for a total of two responses. FDA estimates the reporting burden to be 0.5 hours per response, for a total burden of 1 hour.

With regard to records maintenance, FDA estimates that approximately two recordkeepers will spend 0.05 hours annually maintaining the additional pasteurization records required by § 1210.15, for a total of 0.10 hours annually.

No burden has been estimated for the tagging requirement in § 1210.22 because the information on the tag is either supplied by FDA (permit number) or is disclosed to third parties as a usual and customary part of the shipper's normal business activities (type of product, shipper's name and address). Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not a collection of information. Under 5 CFR 1320.3(b)(2)), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of business activities.

Dated: June 22, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–15719 Filed 6–26–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0755]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Implementation of the Food and Drug Administration Amendments Act of 2007

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Implementation of the Food and Drug Administration Amendments Act of 2007'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

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: On January 18, 2012, the Agency submitted a proposed collection of information entitled ''Implementation of the Food and Drug Administration Amendments Act of 2007'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0625. The approval expires on June 30, 2015. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: June 18, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–15718 Filed 6–26–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0793]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Medical Device Recall Authority

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Medical Device Recall Authority'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

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: On February 13, 2012, the Agency submitted a proposed collection of information entitled ''Medical Device Recall Authority'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0432. The approval expires on June 30, 2015. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: June 18, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–15717 Filed 6–26–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0465]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Experimental Study: Effect of Promotional Offers in Direct-to-Consumer Prescription Drug Print Advertisements on Consumer Product Perceptions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Experimental Study: Effect of Promotional Offers in Direct-to-Consumer Prescription Drug Print Advertisements on Consumer Product Perceptions'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

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: On October 14, 2011, the Agency submitted a proposed collection of information entitled ''Experimental Study: Effect of Promotional Offers in Direct-to-Consumer Prescription Drug Print Advertisements on Consumer Product Perceptions'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0713. The approval expires on June 30, 2015. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: June 18, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–15715 Filed 6–26–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0797]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; State Enforcement Notifications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''State Enforcement Notifications'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, II, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: On March 19, 2012, the Agency submitted a proposed collection of information entitled ''State Enforcement Notifications'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0275. The approval expires on June 30, 2015. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: June 18, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–15707 Filed 6–26–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0253]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Postmarketing Adverse Drug Experience Reporting

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 July 27, 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 0910–0230. 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.

Postmarketing Adverse Drug Experience Reporting—21 CFR 310.305 and 314.80—(OMB Control Number 0910–0230)—(Extension)

Sections 201, 502, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 352, 355, and 371) require that marketed drugs be safe and effective. In order to know whether drugs that are not safe and effective are on the market, FDA must be promptly informed of adverse experiences occasioned by the use of marketed drugs. In order to help ensure this, FDA issued regulations at §§ 310.305 and 314.80 (21 CFR 310.305 and 314.80) to impose reporting and recordkeeping requirements on the drug industry that would enable FDA to take the action necessary to protect the public health from adverse drug experiences.

All applicants who have received marketing approval of drug products are required to report to FDA serious, unexpected adverse drug experiences, as well as follow up reports when needed (§ 314.80(c)(1)). This includes reports of all foreign or domestic adverse experiences as well as those based on information from applicable scientific literature and certain reports from postmarketing studies.

Section 314.80(c)(1)(iii) pertains to such reports submitted by nonapplicants. Under § 314.80(c)(2) applicants must provide periodic reports of adverse drug experiences. A periodic report includes, for the reporting interval, reports of serious, expected adverse drug experiences and all nonserious adverse drug experiences and an index of these reports, a narrative summary and analysis of adverse drug experiences, and a history of actions taken because of adverse drug experiences. Under § 314.80(i), applicants must keep for 10 years records of all adverse drug experience reports known to the applicant.

For marketed prescription drug products without approved new drug applications or abbreviated new drug applications, manufacturers, packers, and distributors are required to report to FDA serious, unexpected adverse drug experiences as well as follow-up reports when needed (§ 310.305(c)). Section 310.305(c)(5) pertains to the submission of follow-up reports to reports forwarded by FDA. Under § 310.305(f), each manufacturer, packer, and distributor shall maintain for 10 years records of all adverse drug experiences required to be reported.

The primary purpose of FDA's adverse drug experience reporting system is to provide a signal for potentially serious safety problems with marketed drugs. Although premarket testing discloses a general safety profile of a new drug's comparatively common adverse effects, the larger and more diverse patient populations exposed to the marketed drug provide the opportunity to collect information on rare, latent, and long-term effects. Signals are obtained from a variety of sources, including reports from patients, treating physicians, foreign regulatory agencies, and clinical investigators. Information derived from the adverse drug experience reporting system contributes directly to increased public health protection because the information enables FDA to make important changes to the product's labeling (such as adding a new warning), decisions about risk evaluation and mitigation strategies or the need for postmarket studies or clinical trials, and when necessary, to initiate removal of a drug from the market.

Respondents to this collection of information are manufacturers, packers, distributors, and applicants.

In the **Federal Register** of March 20, 2012 (77 FR 16232), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received several comments, but they did not pertain to the information collection in 21 CFR 310.305(c)(5) and (f), and 314.80(c)(1)(iii), (c)(2), and (i).

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
310.305(c)(5)	3	1	3	1	3
314.80(c)(1)(iii)	5	1	5	1	5
314.80(c)(2)	665	22.85	15,195	60	911,700
Total					911,708

[1] The reporting burden for §§ 310.305(c)(1), (c)(2), and (c)(3), and 314.80(c)(1)(i) and (c)(1)(ii) is reported under OMB No. 0910–0291. The capital costs or operating and maintenance costs associated with this collection of information are approximately $25,000 annually.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
310.305(f)	25	1	25	16	400

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]—Continued

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
314.80(i)	665	601.5	399,998	16	6,399,968
Total					6,400,368

[1] There are no capital costs or operating costs associated with this collection of information. There are maintenance costs of $22,000 annually.

These estimates are based on FDA's knowledge of adverse drug experience reporting, including the time needed to prepare the reports, and the number of reports submitted to the Agency.

Dated: June 22, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–15708 Filed 6–26–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0640]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Data To Support Food and Nutrition Product Communications as Used by the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Data to Support Food and Nutrition Product Communications as Used by the Food and Drug Administration'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley II, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: On May 27, 2011, the Agency submitted a proposed collection of information entitled ''Data to Support Food and Nutrition Product Communications as Used by the Food and Drug Administration'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0710. The approval expires on June 30, 2014. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: June 18, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–15714 Filed 6–26–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0535]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; ''Real Time'' Surveys of Consumers' Knowledge, Perceptions and Reported Behavior Concerning Foodborne Illness Outbreaks or Food Recalls

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled '''Real Time' Surveys of Consumers' Knowledge, Perceptions and Reported Behavior Concerning Foodborne Illness Outbreaks or Food Recalls'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley II, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: On June 27, 2011, the Agency submitted a proposed collection of information entitled '''Real Time' Surveys of Consumers' Knowledge, Perceptions and Reported Behavior Concerning Foodborne Illness Outbreaks or Food Recalls'' to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0711. The approval expires on October 31, 2013. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: June 20, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–15696 Filed 6–26–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0249]

Guidance for Industry on Lupus Nephritis Caused by Systemic Lupus Erythematosus—Developing Medical Products for Treatment; Withdrawal of Guidance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of a guidance published in the **Federal Register** of June 22, 2010.

DATES: June 27, 2012.

FOR FURTHER INFORMATION CONTACT: Leila P. Hann, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 22, rm. 3143, Silver Spring, MD 20993–0002, 301–796–3367;

or

Philip Desjardins, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 66, rm. 5437, Silver Spring, MD 20993–0002, 301–796–5678;

or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17),

Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 22, 2010 (75 FR 35492), FDA announced the availability of a guidance entitled ''Lupus Nephritis Caused By Systemic Lupus Erythematosus—Developing Medical Products for Treatment.'' This guidance is being withdrawn because it does not reflect FDA's current thinking on the development of medical products for the treatment of lupus nephritis.

Dated: June 22, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–15716 Filed 6–26–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0116]

GFIRST Conference Stakeholder Evaluation

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 30–Day Notice and request for comments; New Information Collection Request: 1670–NEW.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Cybersecurity and Communications (CS&C), National Cyber Security Division (NCSD), United States Computer Emergency Readiness Team (US–CERT) will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). NPPD is soliciting comments concerning new Information Collection Request—GFIRST Conference Stakeholder Evaluation. DHS previously published this ICR in the **Federal Register** on February 29, 2012, for a 60-day public comment period. DHS received two comments. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until July 27, 2012. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to OMB Desk Officer, DHS, Office of Civil Rights and Civil Liberties. Comments must be identified by ''DHS–2011–0116'' and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Email: oira_submission@omb.eop.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 395–5806.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: Corliss McCain, DHS/NPPD/CS&C/NCSD/US–CERT, *Corliss.McCain@dhs.gov.*

SUPPLEMENTARY INFORMATION: GFIRST is DHS's premier cyber conference and continually seeks to enhance collaborative efforts among cyber constituencies, partners, and stakeholders. The data provided will assist GFIRST planners in areas of improvement and efficiency. With the survey responses, we can better tailor our events, materials, and activities to improve efforts to protect our Nation's cybersecurity. As part of the National Strategy for a Secure Cyberspace, US–CERT is required to assist in the fight against the disruption of the operation of critical information systems.

The National Strategy for a Secure Cyberspace requires US–CERT to assist in the continuous assessment of threats and vulnerabilities to Federal cyber systems. As part of our mission, US–CERT is required to assist and urge state and local governments to consider establishing information technology security programs and participate in information sharing and analysis centers with similar governments. The GFIRST conference provides an annual forum to network with public and private stakeholders, while also acting as a conduit for state and local government information sharing critical to securing our Nation's cyberspace.

US–CERT received two comments from the 60-day comment window:

- *Public Comment DHS–2011–0116–002*—Summary: The comment referenced an issue with completing the new I–9 Form and instructions.
  - Action by Agency: NPPD will take no action to update the GFIRST Conference Stakeholder Evaluation Forms. There is no reference to the I–9 Form on the GFIRST Conference Stakeholder Evaluation Forms (DHS Form 9050 and DHS Form 9051).
- *Public Comment DHS–2011–0116–003*—Summary: The comment referenced the total burden cost. A suggestion was made to evaluate the accuracy of the estimated burden cost. There was also a question as to whether the benefit of the survey would outweigh the costs.
  - Action by Agency: NPPD will take no action to update the GFIRST Conference Stakeholder Evaluation Forms. The Total Burden Cost is the total annual costs for operating/maintaining costs for the 1,000 (approximate number) respondents.

Analysis

Agency: The Department of Homeland Security, National Protection and Programs Directorate, Office of Cybersecurity and Communications, United States Computer Emergency Readiness Team.

Title: GFIRST Conference Stakeholder Evaluation.

OMB Number: 1670–NEW.

Frequency: Annually.

Affected Public: Conference attendees, comprising the general public.

Number of Respondents: 1,000 respondents.

Estimated Time Per Respondent: 2 minutes.

Total Burden Hours: 16.6 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $675.95.

Dated: June 20, 2012.

Scott Libby,

Acting Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2012–15608 Filed 6–26–12; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Lien Notice

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Lien Notice (CBP Form 3485). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** (77 FR 21577) on April 10, 2012, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 27, 2012.

ADDRESSES: Interested persons are invited to submit written comments on this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Lien Notice.

OMB Number: 1651–0012.

Form Number: CBP Form 3485.

Abstract: Section 564, Tariff Act of 19, as amended (19 U.S.C. 1564) provides that the claimant of a lien for freight can notify Customs and Border Protection (CBP) in writing of the existence of a lien, and CBP shall not permit delivery of the merchandise from a public store or a bonded warehouse until the lien is satisfied or discharged. The claimant shall file the notification of a lien on CBP Form 3485, *Lien Notice.* This form is usually prepared and submitted to CBP by carriers, cartmen and similar persons or firms. The data collected on this form is used by CBP to assure that liens have been satisfied or discharged before delivery of the freight from public stores or bonded warehouses, and to ensure that proceeds from public auction sales are duly distributed to the lienholder. CBP Form 3485 is provided for by 19 CFR 141.112, and is accessible at *http://forms.cbp.gov/pdf/CBP_Form_3485.pdf.*

Action: CBP proposes to extend the expiration date of this information collection with a change to the burden hours as a result of changing the estimated response time for completing CBP Form 3485 from 5 minutes to 15 minutes. There are no changes to CBP Form 3485.

Type of Review: Extension (with change).

Affected Public: Businesses.

Estimated Number of Respondents: 112,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 28,000.

Dated: June 21, 2012.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2012–15650 Filed 6–26–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Refugee/Asylee Relative Petition, Extension, Without Change, of a Currently Approved Collection

ACTION: 60-Day Notice of Information Collection Under Review: Form I–730, Refugee/Asylee Relative Petition; OMB Control No. 1615–0037.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 27, 2012.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Office of Policy and Strategy, Laura Dawkins, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529. Comments may be submitted to DHS via email at *uscisfrcomment@dhs.gov* and must include OMB Control Number 1615–0037 in the subject box. Comments may also be submitted via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–2007–0030.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without

change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov*.

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, without change, of a currently approved collection.

(2) *Title of the Form/Collection:* Refugee/Asylee Relative Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–730, Refugee/Asylee Relative Petition.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–730 will be used by an asylee or refugee to file on behalf of his or her spouse and/or children for follow-to-join benefits provided that the relationship to the refugee/asylee existed prior to their admission to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 86,400 respondents with an estimated burden per response of .583 hours (35 minutes).

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50,371 Hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov*. We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529, Telephone number 202–272–8377.

Dated: June 22, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–15712 Filed 6–26–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: H–2 Petitioner's Employment Related or Fee Related Notification, Extension, Without Change, of a Currently Approved Collection

ACTION: 60-Day Notice of Information Collection Under Review: Form I–929, Petition for Qualifying Family Member of a U–1 Nonimmigrant; OMB Control No.1615–0106.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 27, 2012.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Office of Policy and Strategy, Laura Dawkins, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529. Comments may be submitted to DHS via email at *uscisfrcomment@dhs.gov* and must include OMB Control Number 1615–0106 in the subject box. Comments may also be submitted via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–2009–0010.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

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, without change, of a currently approved collection.

(2) *Title of the Form/Collection:* H–2 Petitioner's Employment Related or Fee Related Notification.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–929, Petition for Qualifying Family Member of a U–1 Nonimmigrant.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Section 245(m) of the Immigration and Nationality Act (Act) allows certain qualifying family members who have never held U nonimmigrant status to seek lawful permanent residence or apply for immigrant visas. Before such family members may apply for adjustment of status or seek immigrant visas, the U–1 nonimmigrant who has been granted adjustment of status must file an immigrant petition on behalf of the qualifying family member using Form I–929. Form I–929 is necessary for USCIS to make a determination that the eligibility requirements and conditions are met regarding the qualifying family member.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,000 respondents with an estimated average burden per response of 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,000 Hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529, Telephone number 202–272–8377.

Dated: June 22, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–15687 Filed 6–26–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5639–N–01]

Notice of Regulatory Waiver Requests Granted for the First Quarter of Calendar Year 2012

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on January 1, 2012, and ending on March 31, 2012.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Camille E. Acevedo, Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10282, Washington, DC 20410–0500, telephone 202–708–1793 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the first quarter of calendar year 2012.

SUPPLEMENTARY INFORMATION: Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from January 1, 2012 through March 31, 2012. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in

time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the first quarter of calendar year 2012) before the next report is published (the second quarter of calendar year 2012), HUD will include any additional waivers granted for the first quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: June 21, 2012.

Kevin M. Simpson,

Principal Deputy General Counsel.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development January 1, 2012 Through March 31, 2012

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.

II. Regulatory waivers granted by the Office of Housing.

III. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 58.22(a).

Project/Activity: Clark County, WA requested a waiver for a Lilac Gardens HOME Project that involved new construction of approximately 35–38 units of affordable multi-family housing. A waiver was needed because the grantee committed non-HUD funds to acquire property for construction of a multi-family rental property prior to the completion of the environmental review as well as prior to the submission and approval of the Request for Release of Funds.

Nature of Requirement: HUD's regulation at 24 CFR 58.22(a) requires that an environmental review be performed and a Request for Release of Funds (RROF) be completed and certified prior to the commitment of non-HUD funds to a project using HUD funds. Neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in § 58.1(b) on an activity or project until HUD or the state has approved the recipient's RROF and the related certification from the responsible entity. In addition, until the RROF and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in § 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.

Granted By: Mercedes Márquez, Assistant Secretary for Community Planning and Development.

Date Granted: January 9, 2012.

Reason Waived: It was determined that the project would further the HUD mission and advance HUD program goals to develop viable, quality communities, and affordable housing. It was further determined that the grantee unknowingly violated the regulation; no HUD funds were committed; and based on the environmental assessments and the HUD field inspection, granting the waiver will not result in any unmitigated, adverse environmental impact.

Contact: Lauren McNamara, Office of Energy & Environment, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7250, Washington, DC 20410, telephone (202) 402–4466.

• *Regulation:* 24 CFR 92.503(b)(3).

Project/Activity: The cities of Chesapeake, VA; Durham, NC; Greensboro, NC; and the states of Colorado and Virginia requested a waiver of 24 CFR 92.503(b)(3) that requires grant funds provided under the HOME Investment Partnerships (HOME) program for projects that were terminated before completion be repaid to the account from which they were disbursed.

Nature of Requirements: The cities and states were obligated to repay HOME funds for projects that were terminated before completion to the HOME grant from which they were expended. If all or a portion of the total repayment was repaid to an expired account, the repayment would have been received by HUD but retained by the U.S. Treasury. As a result, the repaid funds would have been no longer available for the cities and states to use in eligible affordable housing activities. The National Affordable Housing Act states that such repaid funds shall be immediately available to the grantee for investment in eligible affordable housing activities. In these cases, compliance with the regulation thwarted statutory intent. The waivers were granted to permit the cities and states to repay their local HOME Investment Trust Fund accounts instead of their HOME Investment Trust Treasury accounts and make the repaid funds available for investment in additional HOME-eligible activities.

Granted By: Mercedes Márquez, Assistant Secretary for Community Planning and Development.

Dates Granted: February 17, 2012; March 16, 2012; March 19, 2012; March 30, 2012.

Reasons Waived: The waivers were granted to permit the cities and states to repay their HOME Investment Trust Fund local accounts to make the funds available for eligible affordable housing activities.

Contact: Virginia Sardone, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7164, Washington, DC 20410, telephone (202) 708–2684.

• *Regulation:* 24 CFR 570.308(a)(1).

Project/Activity: Because of the many problems that the city of Pontiac, MI experienced with regard to the administration of its Community Development Block Grant (CDBG) program on September 29, 2011, the city decided to relinquish its entitlement status and become a participating unit of local government in Oakland County's CDBG program. However, in subsequent conversations, Pontiac decided to retain its metropolitan city status. HUD then determined that it could not recognize the cooperation agreement that was executed on October 5, 2011. Instead the city and county decided to enter into a joint agreement for program years 2012–2014. On March 9, 2012, the city and county submitted an executed joint agreement/cooperation agreement to HUD.

Nature of Requirement: HUD's regulation at 24 CFR 570.308(a)(1) states that a joint request shall only be considered if submitted at the time an urban county is seeking a three year qualification or requalification as an urban county. In 2011, Oakland County re-qualified as an urban county for program years 2012–2014. The urban county qualification/requalification process closed on September 30, 2011.

Granted By: Mercedes Márquez, Assistant Secretary, Community Planning and Development.

Date Granted: March 21, 2012.

Reason Waived: HUD's regulation at 24 CFR 570.308(a)(1) was waived so that Oakland County and the city of Pontiac would be permitted to enter into a joint agreement after the urban county qualification/requalification period had closed.

Contact: Gloria Coates, Office of Block Grant Assistance, Entitlement Communities Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7282, Washington, DC 20410, telephone (202) 708–1577.

• *Regulation:* 24 CFR 570.308(c).

Project/Activity: Oakland County, MI requested a waiver for its 2012 program year so that it would be permitted to continue to use its low and moderate income exception percentage of 35.3 percent when carrying out activities that meet the national objective of benefit to low and moderate income persons on an area basis. The city of Pontiac had relinquished its entitlement status, effective September 30, 2011, so that it could become a participating unit of local government in Oakland County's CDBG program. As a result, the urban county's low and moderate income exception percentage rose from 35.3 percent to 43.6 percent for its 2012 program year. This exception percentage rose because of Pontiac's low and moderate income percentage of 64.9 percent. The city and county later determined that they would enter into a joint agreement, which also modified the urban county's configuration. The rise in the county's low and moderate income exception percentage would impact the county's ability to carry out planned capital improvement and infrastructure activities in 24 of its 51 participating units of general local government.

Nature of Requirement: HUD's regulation at 24 CFR 570.308(c) states that a metropolitan city entering into a joint agreement shall be treated the same as any other unit of general local government which is part of the urban county. Therefore, similar to other participating units of local government within the urban county, the city's block groups form a part of the urban county's configuration.

Granted By: Mercedes Márquez, Assistant Secretary, Community Planning and Development.

Date Granted: March 21, 2012.

Reason Waived: The waiver was granted to permit the exclusion of the city of Pontiac's block groups in calculating Oakland County's low and moderate income exception percentage for its 2012 program year to provide ample time for planning and mitigating the effects of the change in the exception percentage. As a result, 24 of the county's 51 participating units of local government would not experience the loss of CDBG-eligible low and moderate income areas, permitting capital improvement and infrastructure activities to be carried out in these areas.

Contact: Gloria Coates, Office of Block Grant Assistance, Entitlement Communities Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7282, Washington, DC 20410, telephone (202) 708–1577.

• *Regulation:* Sections III.B and III.C of the Notice of Allocations, Application Procedures, and Requirements for Homeless Prevention and Rapid Re-Housing Program (HPRP) Grantees under the American Recovery and Reinvestment of 2009 (Recovery Act of 2009), issued March 19, 2009 (HPRP Notice).

Project/Activity: Collier County, FL requested a waiver of the subgrantee restrictions in the HPRP Notice in order to subgrant HPRP funds to the Collier County Housing Authority (CCHA).

Nature of Requirement: The County requested a waiver of the requirement that HPRP funds can be distributed only to private nonprofit organizations or another local government, under Sections III.B and III.C of the Notice of Allocations, Application Procedures, and Requirements for Homelessness Prevention and Rapid Re-Housing Program Grantees.

Granted By: Mercedes Márquez. Assistant Secretary for Community Planning and Development.

Date Granted: January 31, 2012.

Reason Waived: The County provided sufficient information for HUD to conclude the following: (1) HPRP participants would be selected in a manner that would ensure CCHA residents are not unfairly selected over other eligible individuals and families; (2) utilizing CCHA as a subgrantee would result in an efficient and effective program that benefits HPRP participants; and (3) CCHA has the capacity to serve homeless persons.

Contact: Ann M. Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7262, Washington, DC 20410, telephone number (202) 708–4300.

II. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 200.926d (f)(1)(i) and (f)(2)(i).

Project/Activity: Waiver granted to permit new construction single family dwellings in the following boroughs of Alaska: Juneau, Mantanuska-Susitna, Anchorage, Bethel, North Slope (Barrow), Fairbanks (North Star and Southeast) and the Kenai Peninsula to rely upon alternative water systems.

Nature of Requirement: FHA's Minimum Property Standards (MPS) regulations governing new construction for single-family dwellings provide, at 24 CFR 200.926d(f)(1)(i) and (f)(2)(i), that to be eligible for FHA insurance, each living unit within newly constructed single-family residential property should be capable of delivering a flow of 5 gallons per minute (gpm) over a 4 hour period in order to provide a continuing and sufficient supply of safe water under adequate pressure and appropriate quality for household use.

Granted By: Carol J. Galante, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 26, 2012.

Reason Waived: In the identified boroughs of Alaska, conventional water supply systems, such as those required under FHA's MPS, are not feasible as water sources due to the unique geographical characteristics present there. State and local building codes in Alaska provide requirements for such alternative water supply systems that address health and safety concerns, and FHA finds these requirements to be adequate.

Contact: Peter W. Gillispie, Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 425 Third Street, Capitol View, 5th Floor, Washington, DC 20410, telephone (202) 402–3368.

• *Regulation:* 24 CFR 232.3.

Project/Activity: The Bay Ridge Assisted Living Facility (Bay Ridge facility) is a 45 unit assisted living and memory care facility located in Traverse City, Michigan.

Nature of Requirement: HUD's regulation at 24 CFR 232.3 mandates that, in a board and care home or assisted living facility, not less than one full bathroom must be provided for every four residents. Also, the bathroom cannot be accessed from a public corridor or area.

Granted By: Carol J. Galante, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 26, 2012.

Reason Waived: Most of the memory care section's residents at the Bay Ridge facility need assistance with bathing and present special circumstances that do not exist in a traditional assisted living facility. In terms of the building, the ''hallways'' which the residents in each building must cross in order to bathe are not located in an area that will be frequented by anyone other than staff or other residents.

Contact: Vance T. Morris, Special Assistant, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 2337, Washington, DC 20410, telephone (202) 402–2419.

• *Regulation:* 24 CFR 232.3.

Project/Activity: Aim House Board and Care Facility (Aim House) located in Boulder, Colorado.

Nature of Requirement: HUD's regulation at 24 CFR 232.3 mandates that, in a board and care home or assisted living facility, the bathroom cannot be accessed from a public corridor or area.

Granted By: Carol J. Galante, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 6, 2012.

Reason Waived: A waiver of portions of 24 CFR 232.3 eliminated the requirement that bathroom access from any bedroom or sleeping area must not pass through a public corridor or area in circumstance where access is gained by utilizing a common hallway shared by the residents in the sleeping area. The waiver would thus eliminated any violation of this regulatory provision that might otherwise be said to occur, in light of the lack of definitions of ''public corridor'' or ''public area'' within 24 CFR 232.3 itself.

Contact: Vance T. Morris, Special Assistant, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 2337, Washington, DC 20410, telephone (202) 402–2419.

• *Regulation:* 24 CFR 232.3.

Project/Activity: The Brian Center Nursing Care—Low Moor (Brian Center) has a license for 26 beds of assisted living care. The project is located in Low Moor, Virginia.

Nature of Requirement: HUD's regulation at 24 CFR 232.3 mandates that, in a board and care home or assisted living facility, not less than one full bathroom must be provided for every four residents. Also, the bathroom cannot be accessed from a public corridor or area.

Granted By: Carol J. Galante, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 23, 2012.

Reason Waived: The Brian Center facility's assisted living section has a significant number of residents that require assistance with bathing, toileting, and dressing. Consequently, having shower rooms outside of the units allows for a larger space, giving their staff more room to provide assistance to the residents. Brian Center also concluded that this arrangement leads to fewer falls and other shower mishaps. The Brian Center facility's assisted living section also meets the State of Virginia regulation for the ratio of showers to residents.

Contact: Vance T. Morris, Special Assistant, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 2337, Washington, DC 20410, telephone (202) 402–2419.

• *Regulation:* 24 CFR 232.505(a), 232.540(b), 232.605, 232.620—Fire Safety Equipment Loan Program.

Project/Activity: Supplemental Loans to Finance Purchase and Installation of Fire Safety Equipment.

Nature of Requirement: HUD's requirements in 24 CFR 232.505(a), 232.540(b), 232.606, 232.620, establish the processing requirements for application of insurance of a fire safety loan.

Granted By: Carol J. Galante, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 14, 2012.

Reason Waived: It was determined that there was an urgent need to install automatic fire sprinkler systems in nursing homes due to a new federal mandate, and therefore the need to reduce the processing times to obtain insurance for the fire safety loan.

Contact: Vance T. Morris, Special Assistant, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 2337, Washington, DC 20410, telephone (202) 402–2419.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Mound Road Apartments, Joliet, IL, Project Number: 071–HD164/IL06–Q091–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Carol J. Galante, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 6, 2012.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Catherine M. Brennan, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6138, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Jack & Margaret Myers Senior Residence, Rahway, NJ, Project Number: 031–EE074/NJ39–S091–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Carol J. Galante, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 19, 2012.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Catherine M. Brennan, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6138, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Shawnee Supportive Housing, Shawnee, KS, Project Number: 084–HD054/KS16–Q061–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Carol J. Galante, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 19, 2012.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Catherine M. Brennan, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6138, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Notestine Manor, Bellefontaine, OH, Project Number: 043–EE129/OH16–S091–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Carol J. Galante, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 9, 2012.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Catherine M. Brennan, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6138, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: C'est Tres Bon. Hammond, LA, Project Number: 064–HD130/LA48–Q091–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Carol J. Galante, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 9, 2012.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Catherine M. Brennan, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6138, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: ASI Greeley II, Greeley, CO Project Number: 101–HD056/CO99–Q091–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Carol J. Galante, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 9, 2012.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Catherine M. Brennan, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6138, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Bii Di Gain Dash Anwebi Elder Housing, Incorporated, Project Number: 092–EE140/MN46–S091–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Carol J. Galante, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 16, 2012.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Catherine M. Brennan, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6138, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.100(d).

Project/Activity: Monarch Place Apartments, Marion, OH, Project Number: 043–HD057/OH16–Q091–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to closing.

Granted by: Carol J. Galante, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 9, 2012.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Catherine M. Brennan, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6138, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Coretta Scott-King Apartments, Brooklyn, NY, Project Number: 012–EE356/NY36–S071–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Carol J. Galante, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 5, 2012.

Reason Waived: Additional time was needed for the sponsor/owner to secure additional funding, for the firm commitment to be processed and issued, and for the project to achieve initial closing.

Contact: Catherine M. Brennan, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6138, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: St. Michaels Housing, East Hampton, NY, Project Number: 012–EE362/NY36–S071–008.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Carol J. Galante, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 5, 2012.

Reason Waived: Additional time was needed to complete the extensive local approval process required by the Town of East Hampton.

Contact: Catherine M. Brennan, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6138, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Liberty Resources 13, Philadelphia, PA, Project Number: 034–HD100/PA26–Q081–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Carol J. Galante, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 6, 2012.

Reason Waived: Additional time was needed for the project to achieve an initial closing.

Contact: Catherine M. Brennan, Acting Director, Office of Housing Assistance and Grant Administration,

Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6138, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: AHEPA Apartments #63, Tallmadge, OH, Project Number: 042–EE218/OH12–S071–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Carol J. Galante, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 19, 2012.

Reason Waived: Additional time was needed for the Sponsor/owner to resolve legal issues for this mixed finance project prior to initial closing.

Contact: Catherine M. Brennan, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6138, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Delta River Senior Village, Delta, MI, Project Number: 047–EE048/MI33–S081–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Carol J. Galante, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 19, 2012.

Reason Waived: Additional time was needed to receive approval of the site plan from the Delta Township, issue the firm commitment, and to initially close the project.

Contact: Catherine M. Brennan, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6138, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Spruce Manor, Incorporated, Huntington, WV, Project Number: 045–HD044/WV15–Q091–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Carol J. Galante, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 6, 2012.

Reason Waived: Additional time was needed for approval of the site, submission of the firm commitment application, and for the project to achieve an initial closing.

Contact: Catherine M. Brennan, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6138, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Jubilee Station, Charleston, WV, Project Number: 045–HD045/WV15–Q091–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Carol J. Galante, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 16, 2012.

Reason Waived: Additional time was needed for the sponsor/owner to respond to deficiencies in the firm commitment, for HUD to process and issue the firm commitment, and the initial closing to occur.

Contact: Catherine M. Brennan, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6138, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Incor Two, Muskogee, OK, Project Number: 118–HD038/OK56–Q081–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Carol J. Galante, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: February 16, 2012.

Reason Waived: Additional time was needed for the initial closing documents to be approved and for the project to be initially closed.

Contact: Catherine M. Brennan, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6138, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Orchard Housing, Springville, NY, Project Number: 014–EE266/NY06–S071–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Carol J. Galante, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 2, 2012.

Reason Waived: Additional time was needed for HUD to process and issue the firm commitment and for the project to achieve an initial closing.

Contact: Catherine M. Brennan, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6138, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: City of Utica Section 811 Project, Utica, NY, Project Number: 014–HD132/NY06–Q081–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Carol J. Galante, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 2, 2012.

Reason Waived: Additional time was needed for HUD to issue the firm commitment and for the project to achieve an initial closing.

Contact: Catherine M. Brennan, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6138, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Woodburne House, Louisville, KY, Project Number: 083–EE112/KY36–S081–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to

24 months, as approved by HUD on a case-by-case basis.

Granted by: Carol J. Galante, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 7, 2012.

Reason Waived: Additional time was needed for the sponsor/owner to complete technical submission items required by the Kentucky Housing Corporation as well as architectural drawings required by the National Park Service, and for the project to reach an initial closing.

Contact: Catherine M. Brennan, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6138, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165.

Project/Activity: Villa Davis, Phoenix, AZ, Project Number: 123–HD044/AZ20–Q081–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Carol J. Galante, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 22, 2012.

Reason Waived: Additional time was needed for the sponsor/owner to receive approval from the Phoenix City Council for additional funding, submit the firm commitment, and for the project to reach initial closing.

Contact: Catherine M. Brennan, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6138, Washington, DC 20410, telephone (202) 708–3000.

• *Regulation:* 24 CFR 891.165, 24 CFR 891.830(b) and 24 CFR 891.830(c)(4).

Project/Activity: Vineland Avenue Senior Housing, North Hollywood, CA, Project Number: 122–EE213/CA16–S091–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis. Section 891.830(b) requires that capital advance funds be drawn down only in an approved ratio to other funds, in accordance with a drawdown schedule approved by HUD. Section 891.830(c) (4) requires that capital advance funds be drawn down only in an approved ratio to other funds, in accordance with a drawdown schedule approved by HUD.

Granted by: Carol J. Galante, Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: January 20, 2012.

Reasons Waived: Additional time was needed for the firm commitment to be issued and the start of construction on this capital advance upon completion mixed-finance project. HUD in its response to the public comments in the final rule published September 23, 2005, stated ''while HUD generally expects the capital advance funds to be drawn down in a one-to-one ratio for eligible costs actually incurred, HUD may permit on a case-by-case basis, some variance from the drawdown requirements as needed for the success of the project.'' Therefore, the waiver was granted to permit capital advance funds to be used to collateralize the tax exempt bonds issued to finance the construction of the project and to pay off a portion of the tax-exempt bonds that strictly relate to capital advance eligible costs. Also, to allow the capital advance funds to be drawn down in a different mechanism than a pro rata basis in order to satisfy IRS's 50 percent test.

Contact: Catherine M. Brennan, Acting Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 6138, Washington, DC 20410, telephone (202) 708–3000.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• *Regulation:* 24 CFR 5.801(d)(1).

Project/Activity: Clinton Public Housing Authority, (MO031), Clinton, MO.

Nature of Requirement: HUD's regulation at 24 CFR 5.801(d)(1) establishes certain reporting compliance dates. The audited financial statements are required to be submitted to the Real Estate Assessment Center (REAC) no later than nine months after the housing authority's (HA) fiscal year end (FYE), in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing

Date Granted: January 10, 2012.

Reason Waived: The housing authority (HA) requested additional time to submit its fiscal year end December 31, 2010, audited submission as a result of reporting issues with its mixed finance project. The HA staff contends that it did not receive definitive guidance on financial reporting for this project until June 13, 2011, from their auditor. The fiscal year 2010 unaudited financial submission did not include the mixed finance project. The waiver was granted given the uniqueness of this situation and the reporting compliance deadlines were waived for 45 days. The additional time would permit the HA to report the mixed finance project on its audited financial statements and audited financial data schedule. However, this Financial Assessment Subsystem audited submission waiver (extension) does not apply to Circular A–133 submissions to the Federal Audit Clearinghouse. The HA is required to meet the A–133 due dates.

Contact: Johnson Abraham, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Suite 100, Washington, DC 20410, telephone (202) 475–8583.

• *Regulation:* 24 CFR 85.36 (d)(4)(i)(C).

Project/Activity: Cuyahoga Metropolitan Housing Authority, Miles Pointe Elderly and Euclid-Lee Senior projects.

Nature of Requirement: HUD's regulation at 24 CFR 85.36(d)(4)(i)(C) allows HUD to authorize the procurement of a developer through a non-competitive proposal.

Granted by: Sandra B. Henriquez, Assistant Secretary

Date Granted: January 30, 2012.

Reason Waived: HUD reviewed and acknowledged the Cuyahoga Metropolitan Housing Authority's decision to procure Union-Miles Development Corporation as the developer through a noncompetitive proposal.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4130, Washington, DC 20140, telephone (202) 402–4181.

• *Regulation:* 24 CFR 902.20.

Project/Activity: Bessemer Housing Authority, (AL125), Bessemer, AL.

Nature of Requirement: The objective of HUD's regulation at 24 CFR 902.20 is to determine whether a housing authority (HA) is meeting the standard

of decent, safe, sanitary, and in good repair. The Real Estate Assessment Center (REAC) provides for an independent physical inspection of a HA's property of properties that includes a statistically valid sample of the units.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: January 10, 2012.

Reason Waived: On September 5, 2011, the housing authority (HA) was impacted by tropical storm Lee. The Sunset Homes property was flooded and suffered major damage. HA submitted that a physical inspection at that time in time, would unduly penalize the HA and adversely affect its Public Housing Assessment System (PHAS) score. The waiver was granted. Waiving the reporting requirements would give the HA the necessary time to tend to any damage caused by the storm.

Contact: Johnson Abraham, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Suite 100, Washington, DC 20410, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.20.

Project/Activity: Tuscaloosa Housing Authority, (AL077), Tuscaloosa, AL.

Nature of Requirement: The objective of HUD's regulation at 24 CFR 902.20 is to determine whether a housing authority (HA) is meeting the standard of decent, safe, sanitary, and in good repair. The Real Estate Assessment Center (REAC) provides for an independent physical inspection of a HA's property of properties that includes a statistically valid sample of the units.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing

Date Granted: January 26, 2012.

Reason Waived: On April 27, 2011, the housing authority (HA) main office and most units were completely destroyed due to a tornado. The HA is still recovering from the destruction and the staff is working in temporary facilities. A physical inspection at that point in time, would unduly penalize the HA and adversely affect its Public Housing Assessment System (PHAS) score. The waiver was granted. Waiving the reporting requirements would give the HA the necessary time to tend to any damage caused by the tornado.

Contact: Johnson Abraham, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Suite 100, Washington, DC 20410, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.20.

Project/Activity: Davis Community Housing Authority, (UT009), Farmington, UT.

Nature of Requirement: The objective of HUD's regulation at 24 CFR 902.20 is to determine whether a housing authority (HA) is meeting the standard of decent, safe, sanitary, and in good repair. The Real Estate Assessment Center (REAC) provides for an independent physical inspection of a HA's property of properties that includes a statistically valid sample of the units.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: February 27, 2012.

Reason Waived: On December 1, 2011, the housing authority (HA) experienced hurricane force winds that caused extensive damage to their properties including roofs, fences, carports, and storage areas. Many areas in Davis County were declared disaster areas, including some where HA properties are located. The Federal Emergency Management Association and the insurance industry classified the storm as ''catastrophic.'' The waiver of physical inspections was granted because it would give the HA the necessary time to tend to any damages caused by the hurricane. A physical inspection at this time would unduly penalize the HA and adversely affect its Public Housing Assessment System score.

Contact: Johnson Abraham, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Suite 100, Washington, DC 20410, telephone (202) 475–8583.

• *Regulation:* 24 CFR 902.20.

Project/Activity: Springfield Housing Authority, (MA035), Springfield, MA.

Nature of Requirement: The objective of HUD's regulation at 24 CFR 902.20 is to determine whether a housing authority (HA) is meeting the standard of decent, safe, sanitary, and in good repair. The Real Estate Assessment Center (REAC) provides for an independent physical inspection of a HA's property of properties that includes a statistically valid sample of the units.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: March 2, 2012.

Reason Waived: The housing authority (HA) was impacted by a tornado and a snow storm that resulted in significant damage to four of the HA's seven projects. These projects received extensive structural damage, affecting roofs, gutters and windows. The county where the HA is located was declared a federal disaster area as a result of the tornado and again declared a federal disaster areas as a result of a subsequent snow storm. A partial waiver was granted for the Physical Assessment Subsystem (PASS) inspection requirements for four of the HA projects because the circumstances surrounding the waiver request are unusual and beyond the HA's control.

Contact: Johnson Abraham, Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Suite 100, Washington, DC 20410, telephone (202) 475–8583.

• *Regulation:* 24 CFR 941.606(n)(1)(ii)(B).

Project/Activity: Cuyahoga Metropolitan Housing Authority, Miles Pointe Elderly and Euclid-Lee Senior projects.

Nature of Requirement: HUD's regulation at 24 CFR 941.606(n)(1)(ii)(B) provision requires that ''if the partner and/or owner entity (or any other entity with and identity of interest with such parties) wants to serve as the general contractor for the project or development, it may award itself the construction contract only if it can demonstrate to HUD's satisfaction that its bid is the lowest bid submitted in response to a public request for bids.''

Granted by: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: January 30, 2012.

Reason Waived: The Cuyahoga Metropolitan Housing Authority submitted an independent cost estimate.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20140, Room 4130, telephone (202) 402–4181.

• *Regulation:* 24 CFR 941.606(n)(1)(ii)(B).

Project/Activity: Housing Authority of the City of Tuscaloosa, Rosedale Court Redevelopment Phase I—Project # AL077000014.

Nature of Requirement: HUD's regulation at 24 CFR 941.606(n)(1)(ii)(B) requires that ''if the partner and/or owner entity (or any other entity with and identity of interest with such parties) wants to serve as the general contractor for the project or development, it may award itself the

construction contract only if it can demonstrate to HUD's satisfaction that its bid is the lowest bid submitted in response to a public request for bids.''

Granted by: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: February 29, 2012.

Reason Waived: The Housing Authority of the City of Tuscaloosa submitted an independent cost estimate.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20140, Room 4130, telephone (202) 402–4181.

• *Regulation:* 24 CFR 982.161.

Project/Activity: The Housing Authority of the City of Los Angeles (HACLA) requested, on July 21, 2011, a waiver to allow Commissioner Margarita Garr to continue to serve on their Board. She had served on the Board since 2008, but a potential conflict arose because she had also been employed by banks that do business with HACLA.

Nature of Requirement: HUD's regulation at 24 CFR 982.161 provides that neither a public housing agency (PHA) nor any of its contractors or subcontractors may enter into any contract or arrangement in connection with a PHA's tenant-based programs in which persons specified in the regulation have an interest, direct or indirect, during the tenure of the contract or one year thereafter. With respect to HACLA, HUD determined that there was a potential conflict because 24 CFR 982.161 and Section 19 of the Annual Contributions Contract (ACC), which prevents PHAs from entering into any contract in which a member of their governing board has a direct or indirect interest.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: March 7, 2012.

Reason Waived: Because of the conflict between the regulation and the ACC, HUD determined that good cause existed to grant the waiver request.

Contact: Jessica Yuen, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4210, Washington, DC, 20410, telephone (202) 708–6002.

• *Regulation:* 24 CFR 982.503(d) and 982.505(c)(3).

Project/Activity: Dodge County Housing Authority (DCHA), Dodge County, WI.

Nature of Requirement: HUD's regulation at 24 CFR 982.503(d) allows HUD to consider a public housing agency's request for approval to establish a payment standard that is lower than the basic range of 90 to 110 percent of the published fair market rent for each/any bedroom size, but HUD will not approve such payment standard amounts if the family share for more than 40 percent of voucher participants exceeds 30 percent of monthly adjusted income. 24 CFR 982.505(c)(3) states that, if the amount on the payment standard schedule is decreased during the term of the housing assistance payments (HAP) contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning on the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: March 9, 2012.

Reason Waived: This waiver was granted because these cost-saving measures would enable the DCHA to manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4210, Washington, DC, 20410, telephone (202) 708–0477.

• *Regulation:* 24 CFR 982.505(c)(3).

Project/Activity: Boonville Housing Authority (BHA), Boonville, NY.

Nature of Requirement: HUD's regulation at 24 CFR 982.505(c)(3) states that, if the amount on the payment standard schedule is decreased during the term of the housing assistance payments (HAP) contract, the lower payment standard amount generally must be used to calculate the monthly HAP for the family beginning on the effective date of the family's second regular reexamination following the effective date of the decrease.

Granted By: Sandra B. Henriquez, Assistant Secretary for Public and Indian Housing.

Date Granted: January 30, 2012.

Reason Waived: This waiver was granted because this cost-saving measure would enable the BHA to manage its Housing Choice Voucher program within allocated budget authority and avoid the termination of HAP contracts due to insufficient funding.

Contact: Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4210, Washington, DC 20410, telephone (202) 708–0477.

[FR Doc. 2012–15614 Filed 6–26–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–EA–2012–N150; FF09D00000–FXGO1664091HCC05D–123]

Wildlife and Hunting Heritage Conservation Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of teleconference.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a public teleconference of the Wildlife and Hunting Heritage Conservation Council (Council).

DATES: *Teleconference:* Thursday, July 19th, 2012, from 3:30 p.m. to 5 p.m. (Eastern daylight time). For deadlines and directions on registering to listen to the teleconference, submitting written material, and giving an oral presentation, please see ''Public Input'' under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Joshua Winchell, Council Coordinator, 4401 North Fairfax Drive, Mailstop 3103–AEA, Arlington, VA 22203; telephone (703) 358–2639; fax (703) 358–2548; or email *joshua_winchell@fws.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that Wildlife and Hunting Heritage Conservation Council will hold a teleconference.

Background

Formed in February 2010, the Council provides advice about wildlife and habitat conservation endeavors that:

1. Benefit wildlife resources;
2. Encourage partnership among the public, the sporting conservation organizations, the states, Native American tribes, and the Federal Government; and
3. Benefit recreational hunting.

The Council advises the Secretary of the Interior and the Secretary of Agriculture, reporting through the Director, U.S. Fish and Wildlife Service

(Service), in consultation with the Director, Bureau of Land Management (BLM); Director, National Park Service (NPS); Chief, Forest Service (USFS); Chief, Natural Resources Service (NRCS); and Administrator, Farm Services Agency (FSA). The Council's duties are strictly advisory and consist of, but are not limited to, providing recommendations for:

1. Implementing the Recreational Hunting and Wildlife Resource Conservation Plan—A Ten-Year Plan for Implementation;

2. Increasing public awareness of and support for the Wildlife Restoration Program;

3. Fostering wildlife and habitat conservation and ethics in hunting and shooting sports recreation;

4. Stimulating sportsmen and women's participation in conservation and management of wildlife and habitat resources through outreach and education;

5. Fostering communication and coordination among State, tribal, and Federal governments; industry; hunting and shooting sportsmen and women; wildlife and habitat conservation and management organizations; and the public;

6. Providing appropriate access to Federal lands for recreational shooting and hunting;

7. Providing recommendations to improve implementation of Federal conservation programs that benefit wildlife, hunting, and outdoor recreation on private lands; and

8. When requested by the Designated Federal Officer in consultation with the Council Chairperson, performing a variety of assessments or reviews of policies, programs, and efforts through the Council's designated subcommittees or workgroups.

Background information on the Council is available at *http://www.fws.gov/whhcc.*

Meeting Agenda

The Wildlife and Hunting Heritage Conservation Council will consider a letter to the Secretaries of Agriculture and the Interior that encourages them to continue to engage their departments in the Environmental Protection Agency watershed analysis regarding potential impacts of large-scale mining in the Bristol Bay Region of Alaska.

The final agenda will be posted on the Internet at *http://www.fws.gov/whhcc.*

Public Input

If you wish to	You must contact the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) no later than
Listen to the teleconference.	July 12, 2012.
Submit written information or questions before the teleconference for the council to consider during the teleconference.	July 12, 2012.
Give an oral presentation during the teleconference.	July 12, 2012.

Submitting Written Information or Questions

Interested members of the public may submit relevant information or questions for the Council to consider during the teleconference. Written statements must be received by the date listed in ''Public Input'' under **SUPPLEMENTARY INFORMATION**, so that the information may be made available to the Council for their consideration prior to this teleconference. Written statements must be supplied to the Council Coordinator in one of the following formats: One hard copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file).

Giving an Oral Presentation

Individuals or groups requesting to make an oral presentation during the teleconference will be limited to 2 minutes per speaker, with no more than a total of 40 minutes for all speakers. Interested parties should contact the Council Coordinator, in writing (preferably via email; see **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for this teleconference. To ensure an opportunity to speak during the public comment period of the teleconference, members of the public must register with the Council Coordinator. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements to the Council Coordinator up to 30 days subsequent to the teleconference.

Meeting Minutes

Summary minutes of the teleconference will be maintained by the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) and will be available for public inspection within 90 days of the meeting and will be posted on the Council's Web site at *http://www.fws.gov/whhcc.*

Hannibal Bolton,

Acting Director.

[FR Doc. 2012–15674 Filed 6–26–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

National Cooperative Geologic Mapping Program (NCGMP) and National Geological and Geophysical Data Preservation Program (NGGDPP) Advisory Committee

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of annual meeting: Audio Conference.

SUMMARY: Pursuant to Public Law 106–148, the NCGMP and NGGDPP Advisory Committee will hold an audio conference call on July 19, 2012, from 10 a.m.–6 p.m. Eastern Standard Time. The Advisory Committee, comprising representatives from Federal agencies, State agencies, academic institutions, and private companies, shall advise the Director of the U.S. Geological Survey on planning and implementation of the geologic mapping and data preservation programs.

The Committee will hear updates on progress of the NCGMP toward fulfilling the purposes of the National Geological Mapping Act of 1992; the Federal, State, and education components of the NCGMP; and the National Geological and Geophysical Data Preservation Program.

DATES: July 19, 2012, from 10 a.m.–6 p.m. Eastern Standard Time.

FOR FURTHER INFORMATION CONTACT: For the phone number and access code, please contact Michael Marketti, U.S. Geological Survey, Mail Stop 908, National Center, Reston, Virginia 20192, (703) 648–6976.

SUPPLEMENTARY INFORMATION: Meetings of the National Cooperative Geologic Mapping Program and National Geological and Geophysical Data Preservation Program Advisory Committee are open to the Public.

Dated: June 20, 2012.

Kevin T. Gallagher,

Associate Director for Core Science Systems.

[FR Doc. 2012–15649 Filed 6–26–12; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Open Meeting of the Advisory Committee on Water Information

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of an open meeting of the Advisory Committee on Water Information (ACWI).

SUMMARY: Notice is hereby given of a meeting of the ACWI. This meeting is to discuss broad policy-related topics relating to national water initiatives, and the development and dissemination of water information, through reports from ACWI subgroups. The agenda will include updates from ACWI's various subcommittees; discussion of a new Climate Workgroup that is being formed; a report on the National Monitoring Conference, which was held earlier this year in Portland, Oregon; a demonstration of new features that will be released later in the summer for the U.S. Geological Survey's National Water Information System; an update on the National Ground Water Monitoring Network Data Portal; a report on the Hydrologic Frequency Analysis Work Group's progress on revising Bulletin 17B, Guidelines For Determining Flood Flow Frequency; and a demonstration of a new component of the National Environmental Methods Index that provides better access to statistical and assessment methods for water quality.

The ACWI was established under the authority of the Office of Management and Budget Memorandum M–92–01 and the Federal Advisory Committee Act. The purpose of the ACWI is to provide a forum for water information users and professionals to advise the Federal Government on activities and plans that may improve the effectiveness of meeting the Nation's water information needs. Member organizations help to foster communications between the Federal and non-Federal sectors on sharing water information.

Membership, limited to 35 organizations, represents a wide range of water resources interests and functions. Representation on the ACWI includes all levels of government, academia, private industry, and professional and technical societies. For more information on the ACWI, its membership, subgroups, meetings and activities, please see the Web site at: *http://ACWI.gov.*

DATES: The formal meeting will take place from 9:00 a.m. until 4:00 p.m. on July 10, 2012, and from 9:00 a.m. until 4:30 p.m. on July 11, 2011 (times are Eastern Daylight Time).

ADDRESSES: The meeting will be held at the Crowne Plaza Dulles Airport, located at 2200 Centreville Road, Herndon, Virginia 20171. The meeting will also be accessible by teleconference and WebEx. There will also be a teleconference line and a WebEx internet link available for the use of those who cannot attend in person. Information on the teleconference and WebEx is available on the ACWI Web site at: *http://acwi.gov/acwi-minutes/acwi2012/ACWI_July_2012_DRAFT_agenda.pdf*

FOR FURTHER INFORMATION CONTACT: Ms. Wendy E. Norton, ACWI Executive Secretary and Chief, Water Information Coordination Program, U.S. Geological Survey, 12201 Sunrise Valley Drive, MS 417, Reston, VA 20192. Telephone: 703–648–6810; Fax: 703–648–5644; email: *wenorton@usgs.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Up to a half hour will be set aside for public comment. Persons wishing to make a brief presentation (up to 5 minutes) are asked to provide a written request with a description of the general subject to Ms. Norton at the above address no later than July 6, 2012. It is requested that 65 copies of a written statement be submitted at the time of the meeting for distribution to members of the ACWI and placement in the official file. Any member of the public may submit written information and (or) comments to Ms. Norton for distribution at the ACWI meeting.

Dated: June 20, 2012.

Wendy Norton,

Chief, Water Information Coordination Program.

[FR Doc. 2012–15648 Filed 6–26–12; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LL WO31000.L13100000.PB0000.24 1E]

Renewal of Approved Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: 60-Day Notice and Request for Comments.

SUMMARY: In accordance with the Paperwork Reduction Act, the Bureau of Land Management (BLM) invites public comments on, and plans to request approval to continue, the collection of information pertaining to Federal and Indian oil and gas leasing and drainage protection (except on the Osage Reservation). The Office of Management and Budget (OMB) has assigned control number 1004–0185 to this information collection.

DATES: Submit comments on the proposed information collection by August 27, 2012.

ADDRESSES: Comments may be submitted by mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street, NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: to Jean Sonneman at 202–245–0050.

Electronic mail: Jean_Sonneman@blm.gov.

Please indicate ''Attn: 1004–0185'' regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: Donnie Shaw, Division of Fluid Minerals, at 202–912–7155. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, to leave a message for Mr. Shaw.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act, 44 U.S.C. 3501–3521, require that interested members of the public and affected agencies be given an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d) and 1320.12(a)). This notice identifies an information collection that the BLM plans to submit to OMB for approval. The Paperwork Reduction Act provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

The BLM will request a 3-year term of approval for this information collection activity. Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany our submission of the information collection requests to OMB.

The following information is provided for the information collection:

Title: Onshore Oil and Gas Leasing and Drainage Protection (43 CFR Parts 3100, 3120, and 3150, and Subpart 3162).

Forms: This is a nonform collection.

OMB Control Number: 1004–0185.

Abstract: The BLM proposes to extend the currently approved collection of information. The collection enables the BLM to monitor and enforce compliance with requirements pertaining to:

1. Statutory acreage limitations;
2. Waiver, suspension, or reduction of rental or royalty payments;
3. Various types of agreements, contracts, consolidations and combinations;
4. Subsurface storage of oil and gas;
5. Transfers, name changes, and corporate mergers;
6. Lease renewal, relinquishment, termination, and cancellation;
7. Leasing under railroads and certain other types of rights-of-way;
8. Lands available for competitive leasing; and
9. Drainage protection.

Frequency of Collection: On occasion, except for Option Statements (43 CFR 3100.3–3), which must be filed within 90 days after June 30 and December 31 of each year. All responses under this control number are required to obtain or retain a benefit.

Estimated Number and Description of Respondents Annually: 2,484 Federal and Indian oil and gas lessees, operators, record title owners, and holders of options to acquire an interest in Federal or Indian leases.

Estimated Reporting and Recordkeeping ''Hour'' Burden Annually: 6,689 hours.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden Annually: $110,478.

The following table details the individual components and respective hour burdens of this information collection request:

Type of response A.	Number of responses B.	Hours per response C.	Total hours (Column B × Column C) D.
Notice of option holdings 43 CFR 3100.3–1(b)	30	1	30
Option statement 43 CFR 3100.3–3	50	1	50
Proof of acreage reduction 43 CFR 3101.2–4(a)	10	1	10
Excess acreage petition 43 CFR 3101.2–4(a)	10	1	10
Ad hoc acreage statement 43 CFR 3101.2–6	10	1	10
Joinder evidence statement 43 CFR 3101.3–1	50	1	50
Waiver, suspension, or reduction of rental or royalty 43 CFR 3103.4–1	20	1	20
Communitization or drilling agreements 43 CFR 3105.2	150	1	150
Operating, drilling, or development contracts interest statement 43 CFR 3105.3	50	1	50
Joint operations, transportation of oil application 43 CFR 3105.4	20	1	20
Subsurface storage application 43 CFR 3105.5	50	1	50
Consolidation of leases 43 CFR 3105.6	1	1	1
Heirs and devisees statement 43 CFR 3106.8–1	40	1	40
Change of name report 43 CFR 3106.8–2	60	1	60
Corporate merger notice 43 CFR 3106.8–3	100	1	100
Lease renewal application 43 CFR 3107.8	30	1	30
Relinquishment 43 CFR 3108.1	150	0.5	75
Class I reinstatement petition 43 CFR 3108.2–2	87	1	87
Class II reinstatement petition 43 CFR 3108.2–3	59	18	1,062
Class III reinstatement petition 43 CFR 3108.2–4	7	1	7
Application for lease under right-of-way 43 CFR 3109.1	20	1	20
Lands available for competitive leasing 43 CFR 3120.1–1(e)	280	2.5	700
Protests and appeals 43 CFR 3120.1–3	90	1.5	135
Preliminary drainage protection report 43 CFR 3162.2–9	1,000	2	2,000
Detailed drainage protection report 43 CFR 3162.2–9	100	8	800
Additional drainage protection report 43 CFR 3162.2–9	10	8	80
Totals	2,484		5,647

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.

Jean Sonneman,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 2012–15764 Filed 6–26–12; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L19100000–BJ0000–LRCME1R05174]

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 July 27, 2012.

DATES: Protests of the survey must be filed before July 27, 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 tribal trust lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 26 N., R. 25 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 25 East, Principal Meridian, Montana, was accepted June 14, 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. 2012–15682 Filed 6–26–12; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L19100000–BJ0000–LRCME1R04777]

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 July 27, 2012.

DATES: Protests of the survey must be filed before July 27, 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 tribal trust lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 27 N., R. 54 E.

The plat, in one sheet, representing the dependent resurvey of a portion of the 13th Guide Meridian East, through Township 27 North, a portion of the subdivisional lines, the adjusted original meanders of the former left bank of the Missouri River, downstream, through section 12, the subdivision of section 12, the medial line of a relicted channel of the Missouri River, in section 12, a certain division of accretion line, and the subdivision of section 12, and the survey of the meanders of the present left bank of the Missouri River, downstream, through section 12, the left bank of a relicted channel of the Missouri River, in section 12, and a certain partition line in Township 27 North, Range 54 East, Principal Meridian, Montana, was accepted June 14, 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. 2012–15681 Filed 6–26–12; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L19100000–BJ0000–LRCME1G04810]

Notice of Filing of Plats of Survey; South Dakota

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 July 27, 2012.

DATES: Protests of the survey must be filed before July 27, 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, Bureau of Indian Affairs, Great Plains Region, Aberdeen, South Dakota, and was necessary to determine tribal and trust lands.

The lands we surveyed are:

Sixth Principal Meridian, South Dakota

T. 38 N., R. 29 W.

The plat, in one sheet, representing the dependent resurvey of portions of the west boundary, the subdivisional lines; and the subdivision of section 7, and the survey of parcels A and B of section 7, Township 38 North, Range 29 West, Sixth Principal

Meridian, South Dakota, was accepted June 7, 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. 2012–15710 Filed 6–26–12; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Training, Training Plans, and Records

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration sponsored information collection request (ICR) titled, ''Training, Training Plans, and Records,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995.

DATES: Submit comments on or before July 27, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: In 1999, the MSHA published its final rule for 30 CFR part 46, Training, Training Plans, and Records for miners working at shell dredging, sand, gravel, surface stone, surface clay, colloidal phosphate, and surface limestone mines, the operations addressed by part 46 regulations. Between 1995 and 1999, miners in these operations worked 1.07 billion hours and experienced 130 fatal injuries. Between 2007 and 2011, miners at part 46 mines worked 848 million hours and experienced 40 deaths, about 21 percent fewer hours and about 69 percent fewer fatalities. From 1999 through 2011, MSHA promulgated no other significant safety regulations affecting this industry sector.

Training informs miners of safety and health hazards inherent in the workplace and enables them to identify and avoid such hazards. Training becomes even more important in light of certain conditions that can exist when production demands increase, such as an influx of new and less experienced miners and mine operators; longer work hours to meet production demands; and increased demand for contractors who may be less familiar with the dangers on mine property.

The MSHA objective in these existing health and safety training requirements is to ensure that all miners receive the required training, which would result in a decrease in accidents, injuries, and fatalities. The MSHA enforces training requirements at approximately 12,559 surface nonmetal mines and contractors, 10,577 of which are covered by part 46 and 1,882 of which are covered by part 48. The information collection burden under part 48 is covered under OMB 1219–0009.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1219–0131. The current OMB approval is scheduled to expire on June 30, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on March 22, 2012 (77 FR 16862).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219–0131. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–MSHA.

Title of Collection: Training, Training Plans, and Records Under 30 CFR Part 46.

OMB Control Number: 1219–0131.

Affected Public: Private Sector—Businesses or other for-profits and Not-for profit institutions.

Total Estimated Number of Respondents: 10,577.

Total Estimated Number of Responses: 1,025,161.

Total Estimated Annual Burden Hours: 137,571.

Total Estimated Annual Other Costs Burden: $315,641.

Dated: June 20, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–15599 Filed 6–26–12; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Extension of Existing Information Collection; Respirable Coal Mine Dust Sampling

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration is soliciting comments concerning the extension of the information collection for 30 CFR 70.201(c); 90.201(c); 71.201(c) and (e); 70.205(c); 71.205(c); 90.205(c); 70.209(a), (c), and (d); 71.209(a), (c), and (d); 90.209(a), (c), and (d); 70.210(b); 71.210(b); 90.210(b); 70.220(a); 71.220(a); 90.220; 71.300(a); 90.300(a); 71.301(d) and (e); and 90.301(d) and (e).

OMB last approved this information collection request on October 13, 2009. This information collection expires on October 31, 2012.

DATES: All comments must be postmarked or received by midnight Eastern Time on August 27, 2012.

ADDRESSES: Comments concerning the information collection requirements of this notice must be clearly identified with ''OMB 1219–0011'' and sent to the Mine Safety and Health Administration (MSHA). Comments may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Facsimile:* 202–693–9441, include ''OMB 1219–0011'' in the subject line of the message.
- *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. For hand delivery, sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: Greg Moxness, Chief, Economic Analysis Division, Office of Standards, Regulations, and Variances, MSHA, at *moxness.greg@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

The title of the information collection is being changed from ''Mine Operator Dust Data Card'' to ''Respirable Coal Mine Dust Sampling'' to more accurately reflect the type of information that is collected.

Chronic exposure to respirable coal mine dust causes lung diseases including coal workers' pneumoconiosis (CWP), emphysema, silicosis, and chronic bronchitis, known collectively as ''black lung.'' These diseases are debilitating and can result in disability and premature death. While considerable progress has been made in lowering dust levels since 1970 and, consequently, the prevalence rate of black lung among coal miners, severe forms of this disease continue to be identified. Newly released information from the federally funded Coal Workers' Health Surveillance Programs administered by the National Institute for Occupational Safety and Health (NIOSH) indicate that black lung remains an occupational health risk among our nation's coal miners. According to NIOSH, 933 or 3.7 percent of the 25,558 underground coal miners x-rayed between January 2003 and September 2011 were found to have black lung. Also, in FY 2011, over 28,600 former coal miners and the dependents of miners received $417 million in black lung benefits. And, since inception of the federal Black Lung Benefits Program in 1970, over $44 billion in total benefits have been paid out to former miners and their dependents.

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, Section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines.

The implementing standards in 30 CFR parts 70, 71, and 90 require each coal mine operator to protect miners from exposure to excessive dust levels. Parts 70 and 71 require each coal mine operator to continuously maintaining the average concentration of respirable coal mine dust in the mine atmosphere where miners normally work or travel at or below 2.0 milligrams per cubic meter of air (mg/m^3). Because overexposure to respirable coal mine dust containing quartz has been associated with some miners developing silicosis (black lung), the 2.0 mg/m^3 standard is further reduced, using the formula 10 ÷ % quartz, when the respirable dust contains more than 5 percent quartz. Parts 70 and 71 also require each coal mine operator to continuously maintain the average concentration of respirable dust in intake airways at underground mines at or below 1.0 mg/m^3.

In addition, if a part 90 miner is employed at the mine, part 90 requires the coal mine operator to continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which the part 90 miner in the active workings of the mine is exposed at or below 1.0 mg/m^3. This standard is also reduced further if more than 5 percent quartz is found in the mine atmosphere during each shift to which the part part 90 miner is exposed.

This information collection addresses the recordkeeping associated with the following requirements in 30 CFR parts 70, 71, and 90.

30 CFR	Title
§§ 70.201(c); 90.201(c); and 71.201(c), (e)	Sampling; general requirements
§§ 70.205(c); 71.205(c); 90.205(c)	Approved sampling devices; operation; air flowrate
§§ 70.209(a), (c), and (d); 71.209(a), (c), and (d); and 90.209(a), (c), and (d).	Respirable dust samples; transmission by operator Mine Operator Dust Data Card
§§ 70.210(b); 71.210(b)	Respirable dust samples; report to operator; posting
§ 90.210(b)	Respirable dust samples; report to operator
§§ 70.220(a); 71.220(a); 90.220	Status change reports
§§ 71.300(a); 90.300(a)	Respirable dust control plan; filing requirements
§ 71.301(d) and (e)	Respirable dust control plan; approval by District Manager and posting

30 CFR	Title
§ 90.301(d) and (e)	Respirable dust control plan; approval by District Manager; copy to part 90 Miner

II. Desired Focus of Comments

The Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to existing standards that require coal mine operators sample bimonthly designated occupations or work locations and submit these samples to MSHA for analysis to determine if the mine is complying with the applicable dust standards. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- Evaluate the accuracy of the MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Address 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), to minimize the burden of the collection of information on those who are to respond.

The public may examine publicly available documents, including the public comment version of the supporting statement, at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. OMB clearance requests are available on MSHA's Web site at *http://www.msha.gov* under ''Rules & Regs'' on the right side of the screen by selecting *Information Collections Requests, Paperwork Reduction Act Supporting Statements*. The document will be available on MSHA's Web site for 60 days after the publication date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because comments will not be edited to remove any identifying or contact information, MSHA cautions the commenter against including any information in the submission that should not be publicly disclosed. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

The information obtained from mine operators is used by MSHA to determine compliance with health standards associated with 30 CFR parts 70, 71, and 90. MSHA has updated the data for the number of respondents and responses, and the total burden hours and burden costs supporting this information collection extension request.

Summary

Type of Review: Extension.
Agency: Mine Safety and Health Administration.
Title: Mine Operator Dust Data Card.
OMB Number: 1219–0011.
Affected Public: Business or other for-profit.
Cite/Reference/Form/etc. 30 CFR 70.201(c); 90.201(c); 71.201(c) and (e); 70.205(c); 71.205(c); 90.205(c); 70.209(a), (c), and (d); 71.209(a), (c), and (d); 90.209(a), (c), and (d); 70.210(b); 71.210(b); 90.210(b); 70.220(a); 71.220(a); 90.220; 71.300(a); 90.300(a); 71.301(d) and (e); and 90.301(d) and (e).
Total Number of Respondents: 800.
Frequency: Various.
Total Number of Responses: 63,193.
Total Burden Hours: 8,571 hours.
Other Annual Cost Burden: $44,065.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Authority: 44 U.S.C. 3506(c)(2)(A).

Dated: June 22, 2012.

George F. Triebsch,

Certifying Officer.

[FR Doc. 2012–15684 Filed 6–26–12; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before July 27, 2012.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 202–693–9441.
3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, *Attention:* George F. Triebsch, Director, Office of Standards, Regulations and Variances. Persons delivering documents are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

(1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of

protection afforded the miners of such mine by such standard; or

(2) That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2012–096–C.

Petitioner: Mountain Coal Company, LLC, P.O. Box 591, 5174 Highway 133, Somerset, Colorado 81434.

Mine: West Elk Mine, MSHA I.D. No. 05–03672, located in Gunnison County, Colorado.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35(a)(5)(i) (Portable trailing cables and cords).

Modification Request: The petitioner requests a modification of the Decision and Order for an existing petition for modification, docket number M–96–104–C issued on January 14, 1998. That petition was granted for a three-phase 995-volt continuous mining machine and several other pieces of equipment. The petitioner states that:

(1) Several stipulations in the Decision and Order address the use of 2/0 trailing cable supplying power to the continuous miner.

(2) With the purchase of Joy 12CM27 continuous miners, the power supply cable to these continuous miners is 4/0 rather than 2/0. Using the minimum amount of current available and having the instantaneous over-current protection set at 2,500 amps, the use of 1,100 feet of 4/0 trailing cable does not compromise miner safety nor does it adversely impact electrical protection of the cable. Based on this information, the petitioner requests a modification of the existing petition for modification to allow the use of 1,100 feet of 4/0 trailing cable for the continuous miners.

The petitioner asserts that with the terms and conditions of the Decision and Order, the use of 1,100 feet of 4/0 cable for the continuous miners will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2012–097–C.

Petitioner: Consol Pennsylvania Coal Company, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Bailey Mine, MSHA I.D. No. 36–07230, located in Greene County, Pennsylvania.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–098–C.

Petitioner: Consol Pennsylvania Coal Company, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Bailey Mine, MSHA I.D. No. 36–07230, located in Greene County, Pennsylvania.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of

the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in return airways will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air out of the return.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–099–C.

Petitioner: Consol Pennsylvania Coal Company, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Bailey Mine, MSHA I.D. No. 36–07230, located in Greene County, Pennsylvania.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines, it is necessary to determine the exact location and extent of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards and

limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–100–C.

Petitioner: Consol Pennsylvania Coal Company, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Enlow Fork Mine, MSHA I.D. No. 36–07416, located in Washington County, Pennsylvania.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard: (a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–101–C.

Petitioner: Consol Pennsylvania Coal Company, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Enlow Fork Mine, MSHA I.D. No. 36–07416, located in Washington County, Pennsylvania.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements). *Modification Request:* The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in return airways will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air out of the return.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–102–C.

Petitioner: Consol Pennsylvania Coal Company, LLC, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Enlow Fork Mine, MSHA I.D. No. 36–07416, located in Washington County, Pennsylvania.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines, it is necessary to determine the exact location and extent of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–103–C.

Petitioner: Consol of Kentucky, Inc., Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Alma No. 1 Deep Mine, MSHA I.D. No. 46–09277, located in Mingo County, West Virginia.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–104–C.

Petitioner: Consol of Kentucky, Inc., Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Alma No. 1 Deep Mine, MSHA I.D. No. 46–09277, located in Mingo County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in return airways will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper

operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air out of the return.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–105–C.

Petitioner: Consol of Kentucky, Inc., Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Alma No. 1 Deep Mine, MSHA I.D. No. 46–09277, located in Mingo County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines, it is necessary to determine the exact location and extent of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–106–C.

Petitioner: Consolidation Coal Company, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Buchanan #1 Mine, MSHA I.D. No. 44–04856, located in Buchanan County, Virginia.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying

equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–107–C.

Petitioner: Consolidation Coal Company, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Buchanan #1 Mine, MSHA I.D. No. 44–04856, located in Buchanan County, Virginia.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in return airways will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air out of the return.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–108–C.

Petitioner: Consolidation Coal Company, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Buchanan #1 Mine, MSHA I.D. No. 44–04856, located in Buchanan County, Virginia.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines, it is necessary to determine the exact location and extent of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–109–C.

Petitioner: Consol of Kentucky, Inc., Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: MT–41 (Bronzite II) Mine, MSHA I.D. No. 46–09307, located in Mingo County, West Virginia.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before

and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–110–C.

Petitioner: Consol of Kentucky, Inc., Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: MT–41 (Bronzite II) Mine, MSHA I.D. No. 46–09307, located in Mingo County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in return airways or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air out of the return.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–111–C.

Petitioner: Consol of Kentucky, Inc., Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: MT–41 (Bronzite II) Mine), MSHA I.D. No. 46–09307, located in Mingo County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines, it is necessary to determine the exact

location and extent of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–112–C.

Petitioner: Consol of Kentucky, Inc., Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Bronzite III Mine, MSHA I.D. No. 46–05978, located in Mingo County, West Virginia.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in

compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–113–C.

Petitioner: Consol of Kentucky, Inc., Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Bronzite III, MSHA I.D. No. 46–05978, located in Mingo County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in return airways will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air out of the return.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–114–C.

Petitioner: Consol of Kentucky, Inc., Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Bronzite III Mine, MSHA I.D. No. 46–05978, located in Mingo County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines, it is necessary to determine the exact location and extent of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

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(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Dated: June 22, 2012.

George F. Triebsch,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2012–15672 Filed 6–26–12; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 12–050]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the NASA Advisory Council (NAC).

DATES: Wednesday, July 25, 2012, 12 p.m.–4:30 p.m.; Thursday, July 26, 2012, 9 a.m.–4:30 p.m.; and Friday, July 27, 2012, 9 a.m.–12 p.m.; Local Time.

ADDRESSES: NASA Goddard Space Flight Center (GSFC), Building 1, Rooms E100D/E, 8800 Greenbelt Road, Greenbelt, MD 20771–0001. (Visitors will first need to go to the Main Gate to gain access to this Federal facility.)

FOR FURTHER INFORMATION CONTACT: Ms. Marla King, NAC Administrative Officer, NASA Headquarters, Washington, DC 20546, 202–358–1148.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. This meeting is also available telephonically and by WebEx. You must use a touch tone phone to participate in this meeting. Any interested person may call the USA toll-free conference call number (888) 989–9723 and then enter the numeric participant passcode: 39513 followed by the # sign. To join via WebEx the link is *https://nasa.webex.com/,* meeting number on July 25, 2012, is 997–683–462, and password N@C852??! On Thursday, July 26, 2012, the meeting number will be 997–683–462, and password N@C852??! On Friday, July 27, 2012, the meeting number will be 997–683–462, and password N@C852??!

The agenda for the meeting will include reports from the NAC Committees:

—Aeronautics
—Audit, Finance and Analysis
—Commercial Space
—Education and Public Outreach
—Human Exploration and Operations
—Information Technology Infrastructure
—Science
—Technology and Innovation

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. All attendees will be requested to sign a register and to comply with NASA security requirements. Visitors must show valid State or Federal picture ID, green card, or passport, before receiving an access badge to enter into GSFC and must state that they are attending the NASA Advisory Council (NAC) meeting in Building 1. All U.S. citizens and green card holders desiring to attend must provide their full name, company affiliation (if applicable), and citizenship to the GSFC Protective Services Division no later than close of business on July 16, 2012. Foreign Nationals must provide the following information: full name, gender, date/place of birth, citizenship, home address, visa information (number, type, expiration date), passport information (number, country of issue, expiration date), employer/affiliation information (name of institution, title/position, address, country of employer, telephone, email address), and an electronically scanned or faxed copy of their passport and visa to the GSFC Security Office no later than the close of business on July 11, 2012. If the above information is not received by the noted dates, attendees should expect a minimum delay of two (2) hours. All visitors to this meeting will report to the Main Gate where they will be processed through Security prior to entering GSFC. Please provide the appropriate data, via fax 301–286–1230, noting at the top of the page ''Public Admission to the NAC Meeting at GSFC.'' For security questions, please contact Pam Starling at 301–286–6865 or *pamela.a.starling@nasa.gov* or alternate contact: Debbie Brasel at 301–286–6876 or *deborah.a.brasel@nasa.gov.*

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2012–15644 Filed 6–26–12; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans

to request reinstatement of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology, 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: Written comments should be received by August 27, 2012, to be assured of consideration. Comments received after that date would be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by email to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: Monitoring for the National Science Foundation's Math and Science Partnership (MSP) Program.

OMB Control No.: 3145–0199.

Expiration Date of Approval: Not applicable.

1. Abstract

• This document has been prepared to support the clearance of data collection instruments to be used in the evaluation of the Math and Science Partnership (MSP) program. The goals for the program are to (1) Ensure that all K–12 students have access to, are prepared for, and are encouraged to participate and succeed in challenging curricula and advanced mathematics and science courses; (2) enhance the quality, quantity, and diversity of the K–12 mathematics and science teacher workforce; and (3) develop evidence-based outcomes that contribute to our understanding of how students effectively learn the knowledge, skills and ways of thinking inherent in mathematics, computer science, engineering, and/or the natural sciences. The motivational force for realizing these goals is the formation of partnerships between institutions of higher education (IHEs) and K–12 school districts. The role of IHE content faculty is the cornerstone of this intervention. In fact, it is the rigorous involvement of science, mathematics, and engineering faculty—and the expectation that both IHEs and K–12 school systems will be transformed—that distinguishes MSP from other education reform efforts.

• The components of the overall MSP portfolio include active projects whose initial awards were made prior MSP competitions: (1) Comprehensive Partnerships that implement change in mathematics and/or science educational practices in both higher education institutions and in schools and school districts, resulting in improved student achievement across the K–12 continuum; (2) Targeted Partnerships that focus on improved K–12 student achievement in a narrower grade range or disciplinary focus within mathematics or science; (3) Institute Partnerships: Teacher Institutes for the 21st Century that focus on the development of mathematics and science teachers as school—and district-based intellectual leaders and master teachers; (4) Research, Evaluation and Technical Assistance (RETA) projects that build and enhance large-scale research and evaluation capacity for all MSP awardees and provide them with tools and assistance in the implementation and evaluation of their work; (5) MSP–Start Partnerships are for awardees new to the MSP program, especially from minority-serving institutions, community colleges and primarily undergraduate institutions, to support the necessary data analysis, project design, evaluation and team building activities needed to develop a full MSP Targeted or Institute Partnership; and (6) Phase II Partnerships for prior MSP Partnership awardees focus on specific innovation areas of their work where evidence of significant positive impact is clearly documented and where an investment of additional resources and time would produce more robust findings and results.

The MSP monitoring information system, comprised of seven web-based surveys and one paper survey, collects a common core of data about each component of MSP. The Web application for MSP has been developed with a modular design that incorporates templates and self-contained code modules for rapid development and ease of modification. A downloadable version will also be available for respondents who prefer a paper version that they can mail or fax to the external contractor.

Use of the information: This information is required for effective program planning, administration, communication, program and project monitoring and evaluation, and for measuring attainment of NSF's program, project and strategic goals; the Deficit Reduction Act of 2005 (Pub. L. 109–171) which established the Academic Competitiveness (ACC). The MSP program is also directly aligned with two of NSF's long-term investment categories: (1) Transform the Frontiers and (2) Innovate for Society.

2. Expected Respondents

Individuals or households, not-for-profit institutions, business or other for profit, and Federal State, local or tribal government. The expected respondents are principle investigators of all partnership and RETA projects; STEM and education faculty members and administrators who participated in MSP; school districts and IHEs that are partners in an MSP project; and teachers participating in Institute Partnerships.

3. Burden on the Public

Number of Respondents: 1,687.

Burden of the Public: The total estimate for this collection is 16,245 annual burden hours.

This figure is based upon the previous 3 years of collecting information under this clearance and anticipated collections. The average annual reporting burden is estimated to be between 2 and 22 hours per respondent depending on whether a respondent is a direct participant who is self-reporting or representing a project and reporting on behalf of many project participants. The majority of respondents (60%) are estimated to require fewer than two hours to complete the survey. The burden on the public is negligible because the study is limited to project participants that have received funding from the MSP Program.

Dated: June 22, 2012.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2012–15695 Filed 6–26–12; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Proposal and Award Policies and Procedures Guide; Comments Request

AGENCY: National Science Foundation.

ACTION: Notification of extension of public comment period.

SUMMARY: The National Science Foundation published a notice on May 25, 2012, at 77 FR 31401, seeking comments on the National Science Foundation Proposal and Award Policies and Procedures Guide. The original comment date was to end on June 25, 2012.

DATES: Comments on this notice will now be accepted until July 12, 2012.

ADDRESSES: Please send comments to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Dated: June 22, 2012.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2012–15697 Filed 6–26–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting Notice

TIME AND DATE: 9:30 a.m., Tuesday, July 10, 2012.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The ONE item is open to the public.

Matter To Be Considered

8423 Pipeline Accident Report—*Enbridge Incorporated Hazardous Liquid Pipeline Rupture and Release, Marshall, Michigan, July 25, 2010* (DCA–10–MP–007).

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, July 6, 2012.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *www.ntsb.gov.*

Schedule updates including weather-related cancellations are also available at *www.ntsb.gov*.

FOR MORE INFORMATION CONTACT: Candi Bing, (202) 314–6403 or by email at *bingc@ntsb.gov*.

Dated: Friday, June 22, 2012.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2012–15750 Filed 6–25–12; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–409; NRC–2012–0151]

Dairyland Power Cooperative; La Crosse Boiling Water Reactor Exemption From Certain Security Requirements

1.0 Background

The La Crosse Boiling Water Reactor (LACBWR) is owned and was operated by the Dairyland Power Cooperative (DPC). The LACBWR was a nuclear power plant of nominal 50 Mw electrical output, which utilized a forced-circulation, direct-cycle boiling water reactor as its heat source. The plant is located on the east bank of the Mississippi River in Vernon County, Wisconsin. The plant was one of a series of demonstration plants funded, in part, by the U.S. Atomic Energy Commission (AEC). The nuclear steam supply system and its auxiliaries were funded by the AEC, and the balance of the plant was funded by the DPC. The Allis-Chalmers Company was the original licensee; the AEC later sold the plant to the DPC and provided them with a provisional operating license.

The LACBWR was permanently shut down on April 30, 1987, and reactor defueling was completed on June 11, 1987. Pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 50.82, the decommissioning plan was approved August 7, 1991. The decommissioning plan serves as the post-shutdown decommissioning activities report (PSDAR). The DPC has been conducting dismantlement and decommissioning activities. The DPC is developing an onsite independent spent fuel storage installation (ISFSI) and plans to move spent fuel to the ISFSI later in 2012.

2.0 Request/Action

Part 73, ''Physical Protection of Plant and Materials,'' provides in part, ''This part prescribes requirements for the establishment and maintenance of a physical protection system which will have capabilities for the protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used.'' In 10 CFR 73.55, entitled ''Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage,'' paragraph (b)(1) states, ''The licensee shall establish and maintain a physical protection program, to include a security organization, which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.''

The U.S. Nuclear Regulatory Commission (NRC or the Commission) revised 10 CFR 73.55, in part to include the preceding language, through the issuance of a final rule on March 27, 2009 (74 FR 13926). The revised regulation stated that it was applicable to all Part 50 licensees.

By letter dated February 23, 2011, the DPC submitted a revised LACBWR Physical Security Plan (PSP) that included changes to comply with 10 CFR 73.55 and to implement the ISFSI requirements for the planned transfer of spent fuel to dry cask storage. Additionally, by letter dated February 23, 2011, the DPC submitted a request for exemptions from the requirements in the following sections contained in 10 CFR 73.55: 73.55(b)(6), 73.55(b)(7), 73.55(b)(8), 73.55(b)(9)(ii)(A), 73.55(b)(9)(ii)(B), 73.55(b)(9)(ii)(C), 73.55(c)(c)(1)(i), 73.55(c)(2), 73.55(c)(4), 73.55(c)(6), 73.55(d)(3)(i), 73.55(e)(1)(i), 73.55(e)(10), 73.55(g)(2)(iii), 73.55(g)(7)(ii), 73.55(g)(8)(iii), 73.55(i)(1), 73.55(i)(2), 73.55(i)(4)(i), 73.55(i)(4)(ii)(A), 73.55(k)(5)(i)&(ii), 73.55(k)(5)(iii), and 73.55(k)(6)(i), for the LACBWR ISFSI.

3.0 Discussion

Pursuant to 10 CFR 73.5, ''Specific exemptions,'' the Commission may grant exemptions from the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

The NRC evaluated the exemption requests submitted by the DPC and determined that the DPC should be granted exemptions from: 10 CFR 73.55(e)(10) requirement for vehicle control measures to be consistent with the physical protection program design requirements of 10 CFR 73.55(b); 10 CFR 73.55(h)(2)(iii) requirement to have two officers physically present during vehicle searches; 10 CFR 73.55(i)(2) requirement to have intrusion detection equipment that annunciates and video assessment equipment that displays concurrently in at least two continuously staffed onsite alarm stations; 10 CFR 73.55(i)(4)(ii)(A) requirement to maintain and locate the central alarm station inside a protected area; 10 CFR 73.55(k)(5)(i); 10 CFR 73.55(i)(4)(ii); 10 CFR 73.55(k)(5)(ii); 10 CFR 73.55(k)(5)(iii); and 10 CFR 73.55(k)(6)(i). The remaining exemptions requested were determined either to be inapplicable to the facility or are being met by the licensee's current PSP, therefore, your request for exemptions from 10 CFR 73.55(b)(6), 73.55(b)(7), 73.55(b)(9)(ii)(A), 73.55(c)(2), 73.55(c)(4), 73.55(d)(3)(i), 73.55(e)(1)(i), 73.55(g)(2)(iii), 73.55(g)(7)(ii), 73.55(g)(8)(iii), 73.55(i)(1), 73.55(b)(8), 73.55(b)(9)(ii)(B), 73.55(b)(9)(ii)(C), 73.55(c)(1)(i), and 73.55(c)(6) were denied. Additional information regarding the NRC staff evaluation is documented in a Safety Evaluation Report that contains Safeguards Information and is being withheld from public disclosure in accordance with 10 CFR 2.390.

In considering these exemption requests, the NRC staff reviewed the LACBWR ISFSI PSP for compliance with all applicable regulations and NRC Orders. Based upon its review, the NRC staff determined that current barriers and actions implemented under the LACBWR ISFSI PSP satisfy the requirements of 10 CFR 73.55, and that granting the above exemptions will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemptions are authorized by law.

The purpose of the regulations in 10 CFR 73.55 is to establish and maintain a physical protection system designed to protect against radiological sabotage. The NRC staff determined that the NRC approved measures currently employed by the LACBWR in its ISFSI PSP are appropriate for the reduced radiological risk to the public from the ISFSI and are consistent with the general performance standards in 10 CFR 73.55(b). Therefore, the NRC staff concludes that granting the above exemptions do not pose an increased risk to public health and safety and are not inimical to the common defense and security and will not endanger life or property or the common defense and security.

As discussed above, the purpose of 10 CFR 73.55 is to protect against radiological sabotage. The NRC staff determined granting the DPC an exemption from the specified requirements of 10 CFR 73.55 would not reduce the level of security required at the LACBWR ISFSI to an unacceptable level, and will not result in increased radiological risk to the public from operation of this general licensed, standalone ISFSI. Accordingly, the NRC staff has determined that, pursuant to 10 CFR 73.5, these exemptions are authorized by law and are otherwise in the public interest.

4.0 Conclusion

Accordingly, for the exemptions granted, the Commission has determined that, pursuant to 10 CFR 73.5, the exemptions are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest. Therefore, the Commission hereby grants the DPC exemptions from the requirements in 10 CFR 73.55 specified in sections 73.55(e)(10), 73.55(h)(2)(iii), 73.55(i)(2), 73.55(i)(4)(ii), 73.55(i)(4)(ii)(A), 73.55(k)(5)(i), 73.55(k)(5)(ii), 73.55(k)(5)(iii), and 73.55(k)(6)(i) as detailed in our safety evaluation.

This licensing action meets the categorical exclusion provision in 10 CFR 51.22(c)(25), as part of this action is an exemption from the requirements of the Commission's regulations and (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve safeguard plans. Therefore, this action does not require either an environmental assessment or an environmental impact statement.

These exemptions are effective immediately.

Dated at Rockville, Maryland, this 18th day of June 2012.

For the U.S. Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2012–15676 Filed 6–26–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–409; NRC–2012–0102]

Dairyland Power Cooperative, La Crosse Boiling Water Reactor Exemption From Certain Security Requirements

1.0 Background

The La Crosse Boiling Water Reactor (LACBWR) is owned and was operated by the Dairyland Power Cooperative (DPC). The LACBWR was a nuclear power plant of nominal 50 Mw electrical output, which utilized a forced-circulation, direct-cycle boiling water reactor as its heat source. The plant is located on the east bank of the Mississippi River in Vernon County, Wisconsin. The plant was one of a series of demonstration plants funded, in part, by the U.S. Atomic Energy Commission (AEC). The nuclear steam supply system and its auxiliaries were funded by the AEC, and the balance of the plant was funded by the DPC. The Allis-Chalmers Company was the original licensee; the AEC later sold the plant to the DPC and provided them with a provisional operating license.

The LACBWR was permanently shut-down on April 30, 1987, and reactor defueling was completed on June 11, 1987. The decommissioning plan was approved August 7, 1991. The decommissioning plan is considered in the post-shutdown decommissioning activities report (PSDAR). The DPC has been conducting dismantlement and decommissioning activities. The DPC is developing an onsite independent spent fuel storage installation (ISFSI) and plans to move spent fuel to the ISFSI in April 2012.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, ''Physical Protection of Plants and Materials,'' provides in part, ''This part prescribes requirements for the establishment and maintenance of a physical protection system which will have capabilities for the protection of special nuclear material at fixed sites and in transit and

of plants in which special nuclear material is used.'' In Section 73.55, entitled ''Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage,'' paragraph (b)(1) states, ''The licensee shall establish and maintain a physical protection program, to include a security organization, which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.''

The U.S. Nuclear Regulatory Commission (NRC or the Commission) revised 10 CFR 73.55, in part to include the preceding language, through the issuance of a final rule on March 27, 2009 (74 FR 13926). The revised regulation stated that it was applicable to all Part 50 licensees. The NRC became aware that many Part 50 licensees with facilities in decommissioning status did not recognize the applicability of this regulation to their facilities. Accordingly, the NRC informed licensees with facilities in decommissioning status and other stakeholders that the requirements of 10 CFR 73.55 are applicable to all Part 50 licensees. By letter dated August 2, 2010, the NRC discussed the applicability of the revised rule and stated that licensees need to evaluate the applicability of the regulation to its facility and either make appropriate changes to its Physical Security Plan, or request an exemption.

By letter dated December 1, 2010, the DPC responded to the NRC's letter and requested exemptions from the following security requirements in 10 CFR Part 73: 10 CFR 73.55(a)(1), 10 CFR 73.55(b)(2), 10 CFR 73.55(b)(3)(i), 10 CFR 73.55 (b)(6), 10 CFR 73.55(b)(7), 10 CFR 73.55(b)(8), 10 CFR 73.55(b)(9)(ii)(A), 10 CFR 73.55(b)(9)(ii)(B), 10 CFR 73.55(b)(9)(ii)(C), 10 CFR 73.55(c)(2), 10 CFR 73.55 (c)(4), 10 CFR 73.55(c)(6), 10 CFR 73.55(d)(3)(i), 10 CFR 73.55(e), 10 CFR 73.55(e)(1)(i), 10 CFR 73.55(e)(5), 10 CFR 73.55(e)(10), 10 CFR 73.55(g)(2)(iii), 10 CFR 73.55(g)(7)(ii), 10 CFR 73.55(g)(8)(iii), 10 CFR 73.55(i)(1), 10 CFR 73.55(i)(2), 10 CFR 73.55(i)(4)(i), 10 CFR 73.55(i)(4)(ii), 10 CFR 73.55(i)(5)(ii), 10 CFR 73.55 (k)(1), 10 CFR 73.55 (k)(3), 10 CFR 73.55 (k)(5)(i), 10 CFR 73.55 (k)(5)(ii), 10 CFR 73.55 (k)(5)(iii), 10 CFR 73.55 (k)(6)(i), and 10 CFR 73.55 (k)(8). The DPC stated that its intent for submitting this exemption request was to continue to follow its NRC-approved Physical Security Plan (PSP).

3.0 Discussion

Pursuant to 10 CFR 73.5, ''Specific exemptions,'' the Commission may grant exemptions from the regulations in part 73 as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

The NRC staff reviewed the licensee's request and determined that exemptions should be granted from the following requirements: (1) 10 CFR 73.55(b)(3)(i) requirement that the physical protection program have capabilities to interdict and neutralize threats; the 10 CFR 73.55(b)(3)(i) requirement that the physical protection program has capabilities to assess and detect continues to apply; (2) 10 CFR 73.55(b)(6) requirement to demonstrate and assess effectiveness of the local law enforcement agency (LLEA) who serves as armed responders; the 10 CFR 73.55(b)(6) requirement to establish, maintain, and implement a performance evaluation program in accordance with Appendix B of part 73 to demonstrate and assess the effectiveness of armed responders and armed security officers to implement the licensee's protective strategy continues to apply to licensee personnel; (3) 10 CFR 73.55(a)(1) requirement to implement 10 CFR 73.55 requirements by March 31, 2010; (4) 10 CFR 73.55(i)(5)(ii) requirement to provide continuous surveillance, observation, and monitoring of the Owner Controlled Area (OCA) as described in the security plans to detect and deter intruders and ensure the integrity of physical barriers or other components and functions of the onsite physical protection program; (5) 10 CFR 73.55(b)(9)(ii)(A), requirement that the insider mitigation program contain elements from the access authorization program described in 10 CFR 73.56; and (6) 10 CFR 73.55(k)(6)(i) requirement that armed officers, designated to strengthen onsite response capabilities, be onsite and available at all times to carry out their assigned response duties.

Based on an evaluation of the licensee's request and consideration of the reduced radiological risk to the public from an ISFSI at a permanently shut down and defueled reactor where all of the nuclear fuel is located within the spent fuel pool, NRC staff determined granting of these exemption will not inhibit the LACBWR security program from continuing to meet the general performance objectives of 10 CFR 73.55. In addition, the NRC staff determined that (1) there is reasonable assurance that the health and safety of the public will not be endangered by granting said exemptions; (2) such activities will be conducted in compliance with the Commission's regulations and orders; and (3) the approval of these exemptions will not be inimical to the common defense and security or the health and safety of the public. Accordingly, the NRC staff has determined that, pursuant to 10 CFR 73.5, these exemptions are authorized by law and are otherwise in the public interest.

The NRC is denying the remainder of the DPC's exemption requests because (1) the NRC staff determined that the regulations are not applicable to this facility or (2) the DPC stated its intent for submitting the request was to continue to follow its NRC-approved PSP, and the NRC staff determined that the NRC-approved PSP complies with the requirement from which the DPC requested an exemption. Additional information regarding the NRC staff evaluation is documented in a Safety Evaluation Report that contains Sensitive Unclassified Non-Safeguards Information and is being withheld from public inspection in accordance with 10 CFR 2.390.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest based on permanently shut down and defueled conditions at the LACBWR. Therefore, the Commission hereby grants the Dairyland Power Cooperative an exemption from the following requirements: 10 CFR 73.55(a)(1) requirement to implement the revised rule by March 31, 2010; 10 CFR 73.55(b)(3)(i) requirement to interdict and neutralize threats; 10 CFR 73.55(b)(6) requirement to demonstrate and assess effectiveness of LLEA who serve as armed responders; 10 CFR 73.55(b)(9)(ii)(A); 10 CFR 73.55(i)(5)(ii); and 10 CFR 73.55(k)(6)(i). As per the licensee's request and consistent with the NRC's regulatory authority to grant exemptions, the date for the DPC to implement the 10 CFR 73.55 requirements shall correspond with issuance of this exemption.

Part of this licensing action meets the categorical exclusion provision in 10 CFR 51.22(c)(25)(vi)(F), because it is an exemption from the requirements of the Commission's regulations and (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the

amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve safeguard plans. Therefore, this part of the action does not require either an environmental assessment or an environmental impact statement.

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an environmental assessment and finding of no significant impact related to the exemption from the implementation date requirement in 10 CFR 73.55(a)(1) was published in the **Federal Register** on May 8, 2012 (77 FR 27097). Based upon the environmental assessment, the Commission has determined that issuance of this exemption will not have a significant effect on the quality of the human environment.

These exemptions are effective upon issuance.

Dated at Rockville, Maryland, this 19th day of June 2012.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2012–15677 Filed 6–26–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on July 11–13, 2012, 11545 Rockville Pike, Rockville, Maryland.

Wednesday, July 11, 2012, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:00 a.m.: Development of Interim Staff Guidances (ISGs) Supporting the Near-Term Task Force (NTTF) Tier 1 Orders (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the development of ISGs supporting the three Orders (EA–12–049, –50. and –051) issued on March 12, 2012 addressing some of the NTTF Tier 1 recommendations.

10:15 a.m.–11:45 a.m.: NUREG–1934, ''Nuclear Power Plant Fire Modeling Analysis Guidelines'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff, their contractors, and EPRI regarding the development of NUREG–1934, ''Nuclear Power Plant Fire Modeling Analysis Guidelines.''

12:45 p.m.–2:45 p.m.: St. Lucie Unit 2 Extended Power Uprate Application (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Florida Power & Light Company regarding the St. Lucie Unit 2 Extended Power Uprate Application. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)]

3:00 p.m.–4:30 p.m.: Technical Basis for Regulating Extended Storage and Transportation of Spent Nuclear Fuel (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the technical basis for regulating extended storage and transportation of spent nuclear fuel.

4:45 p.m.–7:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)]

Thursday, July 12, 2012, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:35 a.m.–10:00 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. [**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

10:00 a.m.–10:15 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

11:00 a.m.–12:00 p.m.: Assessment of the Quality of Selected NRC Research Projects (Open)—Discussions with members of the ACRS panels performing the quality assessment of the following NRC research projects: (1) NUREG–1953, ''Confirmatory Thermal-Hydraulic Analysis to Support Specific Success Criteria in the Standardized Plant Analysis Risk Models-Surry and Peach Bottom,'' and (2) NUREG/CR–7040, ''Evaluation of JNES Equipment Fragility Tests for Use in Seismic Probabilistic Risk Assessments for U.S. Nuclear Power Plants''

1:00 p.m.–7:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)]

Friday, July 13, 2012, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–4:30 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [**Note:** A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)]

4:30 p.m.–5:00 p.m.: Miscellaneous (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (76 FR 64126–64127). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Antonio Dias, Cognizant ACRS Staff (Telephone: 301–415–6805, Email: *Antonio.Dias@nrc.gov*), five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. 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 Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) Public Law 92–463, and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: June 21, 2012.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2012–15686 Filed 6–26–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Week of June 25, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of June 25, 2012

Friday, June 29, 2012

10:00 a.m. Affirmation Session (Public Meeting) (Tentative)

a. Final Rule—10 CFR parts 2, 12, 51, 54, and 61 ''Amendments to Adjudicatory Process Rules and Related Requirements'' (RIN 3150–AI43) (Tentative).

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: June 22, 2012.

Kenneth Hart,

Technical Coordinator, Office of the Secretary.

[FR Doc. 2012–15843 Filed 6–25–12; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service ™.

ACTION: Notice of modification to existing systems of records.

SUMMARY: The United States Postal Service® is proposing to modify fifteen of its General and Customer Privacy Act Systems of Records. These modifications largely reflect the title and address changes and notification procedures resulting from an organizational re-design of the Postal Service. Also included are minor revisions to the category of records covered by the system and in the system.

DATES: The revision will become effective without further notice on July 27, 2012 unless comments received on or before that date result in a contrary determination.

ADDRESSES: Comments may be mailed or delivered to the Records Office, United States Postal Service, 475 L'Enfant Plaza SW., Room 9431, Washington, DC 20260–2201. Copies of all written comments will be available at this address for public inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jane Eyre, Manager, Records Office, 202–268–2608.

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish their amended systems of records in the **Federal Register** when there is a revision, change, or addition. The Postal Service ™ has reviewed its systems of records and has determined that these fifteen General and Customer Privacy Act Systems of Records should be revised to modify system location, categories of individuals covered by the system, categories of records in the system, system manager(s) and address, and notification procedure.

I. Background

In 2011, the Postal Service began a significant management and organizational re-design. Many executive titles have been updated to

reflect the new responsibilities of the leadership teams.

II. Rationale for Changes to USPS Privacy Act Systems of Records

Beginning in January, 2011, many managerial titles and responsibilities in the Postal Service have been revised to reflect changes in the structure of the organization. As a result, there is a continuing need to update the information concerning Privacy Act Systems of Records to reflect changes in the identity or title of responsible officials.

Also, it is necessary to remove outdated information pertaining to adding postage to postage meters.

III. Description of Changes to Systems of Records

The Postal Service is modifying the fifteen systems of records listed below. Pursuant to 5 U.S.C. 552a (e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed modifications has been sent to Congress and to the Office of Management and Budget for their evaluation. The Postal Service does not expect this amended notice to have any adverse effect on individual privacy rights. The list of affected systems is as follows:

USPS 100.500
SYSTEM NAME: Personnel Resource Management Records
USPS 300.000
SYSTEM NAME: Finance Records
USPS 400.000
SYSTEM NAME: Supplier and Tenant Records
USPS 500.000
SYSTEM NAME: Property Management Records
USPS 500.100
SYSTEM NAME: Carrier and Vehicle Operator Records
USPS 500.300
SYSTEM NAME: Emergency Management Records
USPS 800.100
SYSTEM NAME: Address Matching for Mail Processing
USPS 800.200
SYSTEM NAME: Address Element Correction Enhanced Service (AECES)
USPS 810.200
SYSTEM NAME: www.usps.com Ordering, Payment, and Fulfillment
USPS 820.100
SYSTEM NAME: Mailer Services—Applications and Approvals
USPS 820.200
SYSTEM NAME: Mail Management and Tracking Activity
USPS 830.000
SYSTEM NAME: Customer Service and Correspondence
USPS 840.000
SYSTEM NAME: Customer Mailing and Delivery Instructions
USPS 850.000
SYSTEM NAME: Auction Files
USPS 870.200
SYSTEM NAME: Postage Meter and PC Postage Customer Data and Transaction Records

Accordingly, for the reasons stated, the Postal Service proposes changes in existing systems of records as follows:

USPS 100.500

SYSTEM NAME:

Personnel Resource Management Records.

SYSTEM MANAGER(S) AND ADDRESS:

* * * * *

[*CHANGE TO READ*]

Vice President, Network Operations, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

* * * * *

USPS 300.000

SYSTEM NAME:

Finance Records.

SYSTEM MANAGER(S) AND ADDRESS:

[*CHANGE TO READ*]

Vice President, Controller, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

* * * * *

USPS 400.000

SYSTEM NAME:

Supplier and Tenant Records.

SYSTEM MANAGER(S) AND ADDRESS:

* * * * *

[*CHANGE TO READ*]

For real property owner and tenant records: Vice President, Facilities, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

* * * * *

USPS 500.000

SYSTEM NAME:

Property Management Records.

SYSTEM MANAGER(S) AND ADDRESS:

[*CHANGE TO READ*]

For records of accountable property, carpool membership, and use of USPS parking facilities: Vice President, Facilities, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

* * * * *

[*CHANGE TO READ*]

For other records of computer access authorizations: Chief Information Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

* * * * *

USPS 500.100

SYSTEM NAME:

Carrier and Vehicle Operator Records.

SYSTEM MANAGER(S) AND ADDRESS:

[*CHANGE TO READ*]

Vice President, Delivery and Post Office Operations, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

* * * * *

USPS 500.300

SYSTEM NAME:

Emergency Management Records.

SYSTEM MANAGER(S) AND ADDRESS:

* * * * *

[*CHANGE TO READ*]

Vice President, Product Information, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

[*INSERT NEW TEXT*]

Senior Director, Office of the Postmaster General and CEO, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

* * * * *

USPS 800.100

SYSTEM NAME:

Address Matching for Mail Processing.

SYSTEM MANAGER(S) AND ADDRESS:

[*CHANGE TO READ*]

Vice President, Engineering Systems, United States Postal Service, 8403 Lee Highway, Merrifield, VA 22082.

* * * * *

NOTIFICATION PROCEDURE:

[*CHANGE TO READ*]

Customers waiting to know if information about them is kept in this system of records must address inquiries in writing to the Manager, Letter Mail Technology, 8403 Lee Highway, Merrifield, VA 22082.

* * * * *

USPS 800.200

SYSTEM NAME:

Address Element Correction Enhanced Service (AECES).

SYSTEM MANAGER(S) AND ADDRESS:

[*CHANGE TO READ*]

Vice President, Product Information, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

Vice President, Delivery and Post Office Operations, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

* * * * *

USPS 810.200

SYSTEM NAME:

www.usps.com Ordering, Payment, and Fulfillment.

SYSTEM MANAGER(S) AND ADDRESS:

* * * * *

[*INSERT NEW TEXT*]

Chief Financial Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

* * * * *

USPS 820.100

SYSTEM NAME:

Mailer Services—Applications and Approvals.

SYSTEM MANAGER(S) AND ADDRESS:

* * * * *

[*INSERT NEW TEXT*]

Vice President, Mail Entry and Payment Technology, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

* * * * *

USPS 820.200

SYSTEM NAME:

Mail Management and Tracking Activity.

SYSTEM MANAGER(S) AND ADDRESS:

* * * * *

[*INSERT NEW TEXT*]

Vice President, Mail Entry and Payment Technology, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

* * * * *

USPS 830.000

SYSTEM NAME:

Customer Service and Correspondence.

SYSTEM LOCATION:

[*CHANGE TO READ*]

USPS Consumer and Industry Affairs, Headquarters; Integrated Business Solutions Services Centers; the National Customer Support Center (NCSC); districts, Post Offices, contractor sites; and detached mailing units at customer sites.

CATAGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

[*CHANGE TO READ*]

This system contains records relating to customers who contact customer service by online and offline channels. This includes customers making inquiries via email, 1–800–ASK–USPS, other toll-free contact centers, or the Business Service Network (BSN), as well as customers with product-specific service or support issues.

SYSTEM MANAGER(S) AND ADDRESS:

[*CHANGE TO READ*]

Vice President, Consumer and Industry Affairs, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

* * * * *

USPS 840.000

SYSTEM NAME:

Customer Mailing and Delivery Instructions.

CATEGORIES OF RECORDS IN THE SYSTEM

[*CORRECT NUMBERING TO READ 1 THROUGH 3*]

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

[*CHANGE TO READ*]

For SOA and pandering advertisement prohibitory orders: Vice President, Pricing, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

For other delivery records: Vice President, Delivery and Post Office Operations, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

* * * * *

USPS 850.000

SYSTEM NAME:

Auction Files.

SYSTEM LOCATION:

[*CHANGE TO READ*]

USPS Mail Recovery Center.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

[*CHANGE TO READ*]

Vice President, Supply Management, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

* * * * *

USPS 870.200

SYSTEM NAME:

Postage Meter and PC Postage Customer Data and Transaction Records.

CATEGORIES OF RECORDS IN THE SYSTEM:

[*DELETE THE FOLLOWING TEXT*]

3. *Transactional information:* Post Office where mail is entered; type (credit card, ACH, check, etc.), amount, and date of postage purchases; ascending and descending register values; amount of unused postage refunded; contact telephone number; package identification code, Customized Postage image data; declared value of contents and cost of insurance for insured packages; destination five-digit ZIP Code, date, and rate category of each indicium created; and transaction documents.

4. *Financial information:* Credit and/or debit card number, type, expiration date, and transaction number; check and electronic fund transfer information; ACH information.

NOTIFICATION PROCEDURE:

[*CHANGE TO READ*]

Customers wanting to know if information about them is maintained in this system of records must address inquires in writing to: Manager, Payment Technology, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

* * * * *

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–15606 Filed 6–26–12; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30121; 812–13666]

Medallion Financial Corp.; Notice of Application

June 21, 2012.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of an application for an order under section 61(a)(3)(B) of the Investment Company Act of 1940 (the ''Act'').

Summary of Application: Applicant, Medallion Financial Corp., requests an order approving a proposal to grant certain stock options to directors who are not also employees or officers of the Applicant (the ''Eligible Directors'') under its Amended and Restated 2006 Non-Employee Director Stock Option Plan (the ''Amended Director Plan'').

DATES: *Filing Dates:* The application was filed on June 12, 2009, and amended on June 28, 2010, May 12, 2011, and June 18, 2012.

Hearing or Notification of Hearing: An order granting the application will be

issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 16, 2012, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicant, 437 Madison Avenue, 38th Floor, New York, New York, 10022.

FOR FURTHER INFORMATION CONTACT: Lewis B. Reich, Senior Counsel, at (202) 551–6919, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicant's Representations

1. Applicant, a Delaware corporation, is a business development company (''BDC'') within the meaning of section 2(a)(48) of the Act.[1] Applicant is a specialty finance company that has a leading position in originating, acquiring and servicing loans that finance taxicab medallions and various types of commercial businesses. Applicant operates its businesses through four wholly-owned subsidiaries, Medallion Funding LLC, Medallion Capital, Inc., Freshstart Venture Capital Corp., and Medallion Bank.[2] Applicant is managed by its executive officers under the supervision of its board of directors (''Board''). Applicant's investment decisions are made by its executive officers under authority delegated by the Board. Applicant does not have an external investment adviser within the meaning of section 2(a)(20) of the Act.

2. Applicant requests an order under section 61(a)(3)(B) of the Act approving its proposal to grant certain stock options under the Amended Director Plan to its Eligible Directors.[3] The Amended Director Plan amends the Applicant's 2006 Non-Employee Director Stock Option Plan (the ''2006 Director Plan'') by increasing the maximum number of shares of Applicant's common stock (''Common Stock'') available for issuance from 100,000 under the 2006 Director Plan to 200,000 under the Amended Director Plan. Applicant has a nine member Board. Six of the seven current Eligible Directors on the Board are not ''interested persons'' (as defined in section 2(a)(19) of the Act) of the Applicant. The Board approved the Amended Director Plan at a meeting held on April 16, 2009, and Applicant's stockholders approved the Amended Director Plan at the annual meeting of stockholders held on June 5, 2009. The Amended Director Plan will become effective on the date on which the Commission issues an order on the application (the ''Approval Date'').[4]

3. Applicant's Eligible Directors are eligible to receive options under the Amended Director Plan. Under the Amended Director Plan, a maximum of 200,000 shares of Applicant's Common Stock, in the aggregate, may be issued to Eligible Directors and there is no limit on the number of shares of Applicant's Common Stock that may be issued to any one Eligible Director. The Amended Director Plan also provides that (i) at each annual shareholders' meeting after the Approval Date, each Eligible Director elected or re-elected at that meeting to a three-year term will automatically be granted options to purchase 9,000 shares of Applicant's Common Stock; and (ii) upon the election, reelection or appointment of an Eligible Director to the Board other than at the annual shareholders' meeting, that Eligible Director will be granted an option to purchase that number of shares of Common Stock determined by multiplying 9,000 by a fraction, the numerator of which is equal to the number of whole months remaining in the new director's term and the denominator of which is 36. The options issued under the Amended Director Plan will vest and become exercisable with respect to one-third of the number of shares covered by such option on each of the first three anniversaries of the date of the grant.

4. Under the terms of the Amended Director Plan, the exercise price of an option will be the ''Fair Market Value'' of the Common Stock, which is the closing price of the Common Stock as reported in the Wall Street Journal, Northeast Edition, as quoted on the NASDAQ Global Select Market, the successor to the NASDAQ National Market, on the date of grant, or if no such market value exists, the fair market value of a share (which may not be less than the current net asset value per share), as determined by a committee consisting of directors of the Applicant who are not eligible to participate in the 2006 Director Plan or the Amended Director Plan pursuant to a reasonable method adopted in good faith for such purpose. Options granted under the Amended Director Plan will expire ten years from the date of grant and may not be transferred other than by will or the laws of descent and distribution. Any Eligible Director holding exercisable options under the Amended Director Plan who ceases to be an Eligible Director for any reason, other than permanent disability, death or removal for cause, may exercise the rights the director had under the options on the date the director ceased to be an Eligible Director for a period of up to three months following that date. No additional options held by the director will become exercisable after the three

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] The Applicant also conducts business through its asset-based lending division, Medallion Business Credit, an originator of loans to small businesses for the purpose of financing inventory and receivables, which prior to merging into Applicant on December 31, 2007, was a wholly owned investment company subsidiary.

[3] The Eligible Directors receive a $38,500 per year retainer payment, $3,850 for each Board meeting attended, $1100 for each telephonic Board meeting, from $1,650 to $3,850 for each committee meeting attended, and reimbursement for related expenses. The Eligible Directors also receive $1,485 for each board meeting attended for one of the wholly-owned subsidiaries (other than Medallion Bank).

[4] Applicant previously obtained similar relief for its 1996 Amended and Restated Non-Employee Director Stock Option Plan and its 2006 Director Plan. (*See* Medallion Financial Corp., Investment Company Act Rel. Nos. 22350 (Nov. 25, 1996) (notice) and 22417 (Dec. 23, 1996) (order), *as amended by* Medallion Financial Corp., Investment Company Act Rel. Nos. 24342 (Mar. 17, 2000) (notice) and 24390 (Apr. 12, 2000) (order) and Medallion Financial Corp., Investment Company Act Release Nos. 27917 (July 30, 2007) (notice) and 27955 (Aug. 28, 2007) (order).) The 1996 Director Plan expired on May 21, 2006, and was replaced by the 2006 Director Plan. Applicant also obtained relief for its 2009 Employee Restricted Stock Plan, permitting it to issue restricted stock (i.e., stock that, at the time of issuance, is subject to certain forfeiture restrictions and thus is restricted as to its transferability until such forfeiture restrictions have lapsed) (the ''Restricted Stock'') to its employees. (*See* Medallion Financial Corp., Investment Company Act Rel. Nos. 29201 (Apr. 1, 2010) (notice) and 29258 (Apr. 26, 2010) (order)) and that plan was subsequently approved by the Applicant's stockholders at the annual meeting of stockholders held on June 11, 2010.

month period. In the event of removal of an Eligible Director for cause, all outstanding options held by such director shall terminate as of the date of the director's removal. Upon the permanent disability or death of an Eligible Director, those entitled to do so under the director's will or the laws of descent and distribution will have the right, at any time within twelve months after the date of permanent disability or death, to exercise in whole or in part any rights which were available to the director at the time of the director's permanent disability or death.

5. Applicant's officers and employees, including employee directors, are eligible or have been eligible to receive options under Applicant's 2006 Employee Stock Option Plan (the ''2006 Employee Plan''), which replaced the Amended and Restated 1996 Stock Option Plan (the ''1996 Employee Plan''), which expired on May 21, 2006. Applicant's employees are also eligible to receive grants of restricted stock under its 2009 Employee Restricted Stock Plan (the ''Restricted Stock Plan'').[5] Eligible Directors are not eligible to receive stock options or Restricted Stock under the 2006 Employee Plan, the 1996 Employee Plan or under the Restricted Stock Plan. Eligible Directors are eligible or have been eligible to participate in the Applicant's 2006 Director Plan under which no shares of the Applicant's Common Stock remain for issuance. Under the Amended Director Plan, the Restricted Stock Plan and the 2006 Employee Plan, an aggregate of 1,800,000 shares of the Applicant's Common Stock have been reserved for issuance to the Applicant's directors, officers and employees (800,000 shares are reserved for issuance under the 2006 Employee Plan, 800,000 shares under the Restricted Stock Plan and 200,000 shares under the Amended Director Plan). The remaining 156,155 shares of the Applicant's Common Stock subject to issuance to officers and employees under the 2006 Employee Plan represent 0.73% of the 21,451,243 shares of the Applicant's Common Stock outstanding as of June 15, 2012. The remaining 627,392 shares of the Applicant's Common Stock subject to issuance to officers and employees under the Restricted Stock Plan represent 2.93% of the Applicant's Common Stock outstanding as of June 15, 2012. The 200,000 shares that would be available for issuance under the Amended Director Plan would comprise 0.93% of the Applicant's Common Stock outstanding as of June 15, 2012. The Applicant has no restricted stock, warrants, options or rights to purchase its outstanding voting securities other than those granted or to be granted to its directors, officers and employees pursuant to the Restricted Stock Plan, Amended Director Plan, the 2006 Director Plan, the 1996 Employee Plan and the 2006 Employee Plan.

6. The amount of voting securities of the Applicant that would, on the Approval Date, result from the grant of all restricted stock issued or issuable under the Restricted Stock Plan is 800,000 shares, from the exercise of all options issued or issuable to the Applicant's directors under the Amended Director Plan is 200,000 shares, from the exercise of all options issued or issuable to the Applicant's officers and employees under the 2006 Employee Plan is 800,000 shares, and from the exercise of all options issued or issuable to the Applicant's officers and employees under the 1996 Employee Plan is 331,214 shares, which is approximately 3.73%, 0.93%,[6] 3.73%, and 1.54%, respectively, of the 21,451,243 shares of the Applicant's Common Stock outstanding on June 15, 2012. This totals 2,131,214 shares in the aggregate, or approximately 9.94% of the 21,451,243 shares of the Applicant's Common Stock outstanding on June 15, 2012. No options remain issued, issuable or exercisable under the 1996 Director Plan.

Applicant's Legal Analysis

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3). Section 61(a)(3)(B) provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) The options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the voting securities; (c) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the Commission upon application; (d) the options are not transferable except for disposition by gift, will or intestacy; (e) no investment adviser of the BDC receives any compensation described in section 205(a)(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (b)(1) or (b)(2) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3) provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to any executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

3. Applicant represents that its proposal to grant certain stock options to Eligible Directors under the Amended Director Plan meets all the requirements of section 61(a)(3). Applicant states that the Board is actively involved in the oversight of Applicant's affairs and that it relies extensively on the judgment and experience of its Board. In addition to their duties as Board members generally, Applicant states that the Eligible Directors provide guidance and advice on financial and operational issues, credit and loan policies, asset valuation and strategic direction, as well as serving on committees. Applicant believes that the availability of options under the Amended Director Plan will provide significant at-risk incentives to Eligible Directors to remain on the Board and devote their best efforts to ensure Applicant's success. Applicant states that the options will provide a means for the Eligible Directors to increase their ownership interests in Applicant, thereby ensuring close identification of their interests with those of Applicant and its stockholders. Applicant asserts that by providing incentives such as options, Applicant will be better able to maintain continuity in the Board's membership and to attract and retain the highly experienced, successful and motivated business and professional people who are critical to Applicant's success as a BDC.

4. Applicant states that the amount of voting securities that would on the Approval Date result from the grant of

[5] As of June 15, 2012, grants of 172,608 shares of Restricted Stock have been made under the Restricted Stock Plan.

[6] The increase of 100,000 shares under the Amended Director Plan represents 0.47% of the Applicant's outstanding Common Stock.

all restricted stock issued or issuable under the Restricted Stock Plan and the exercise of all outstanding options issued or issuable to the directors, officers, and employees under the Amended Director Plan, the 2006 Employee Plan and the 1996 Employee Plan would be 2,131,214 shares of Applicant's Common Stock, or approximately 9.94% of Applicant's shares of Common Stock outstanding on June 15, 2012, which is below the percentage limitations in the Act. Applicant asserts that, given the relatively small amount of Common Stock issuable to Eligible Directors upon their exercise of options under the Amended Director Plan, the exercise of such options would not, absent extraordinary circumstances, have a substantial dilutive effect on the net asset value of Applicant's Common Stock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–15638 Filed 6–26–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67229; File No. SR–NASDAQ–2012–058]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of Alpha Index-Linked Securities

June 21, 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 June 11, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to adopt Nasdaq Rule 5712, Alpha Index-Linked Securities, providing for the listing, trading and delisting of securities linked to the performance of certain specified NASDAQ OMX Alpha Indexes as set forth below.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to provide for the listing and trading on NASDAQ of Equity Index-Linked Securities (as defined in Exchange Rule 5710) linked, on an unleveraged basis, to the following Alpha Indexes owned and maintained by NASDAQ OMX Group Inc.: GOOG vs. SPY (GOOSY) and *AAPL* vs. *SPY (AVSPY)* (together, the ''Specified Alpha Indexes''). These Alpha Indexes are relative performance based equity indexes maintained by The NASDAQ OMX Group.[3]

Currently, Nasdaq Rule 5710 provides for the listing and trading of Equity Index-Linked Securities. In particular, Nasdaq Rule 5710(k)(i)(A) provides for the listing and trading pursuant to Commission Rule 19b–4(e) of Equity Index-Linked Securities with respect to which the underlying indexes have at least 10 component securities and either (1) have been reviewed and approved for the trading of options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements for non-U.S. stocks, continue to be satisfied, or (2) meet specific index criteria set forth in Rule 5710(k)(i)(A)(2). NASDAQ Alpha Indexes do not contain at least 10 component securities and therefore do not meet these requirements, even if they have been reviewed and approved for the trading of options by the Commission under Section 19(b)(2) of the Act, and therefore are ineligible for listing and trading pursuant to Rule 5710(k)(i)(A).

This proposed rule change would therefore add new Exchange Rule 5712 which provides that NASDAQ will consider for listing and trading Equity Index-Linked Securities that are linked to the Specified Alpha Indexes and that meet the criteria specified therein (the ''Alpha Index-Linked Securities'').

Alpha Index Calculation

The Alpha Indexes measure relative total returns of one stock or one exchange-traded fund (''ETF'') share versus another ETF share (each such combination of two components is referred to as an ''Alpha Pair'').[4] The first component identified in an Alpha Pair (the ''Target Component'') is measured against the second component identified in the Alpha Pair (the ''Benchmark Component'').

In order to calculate an Alpha Index, NASDAQ measures the total return performance of the Target Component relative to the total return performance of the Benchmark Component, based upon prices of transactions on the primary listing exchange of the Benchmark Component and the Target Component. The value of each Alpha Index was initially set at 100.00.[5]

To calculate any Alpha Index, NASDAQ first calculates a daily total return for both the Target Component

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission has previously approved the listing and trading of options on certain Alpha Indexes (''Alpha Index Options'') on NASDAQ OMX PHLX (''PHLX''). *See* Securities Exchange Act Release No. 63860 (February 7, 2011), 76 FR 7888 (February 11, 2011) (SR–Phlx–2010–176), approving options on the following Alpha Indexes: AAPL/SPY, AMZN/SPY, CSCO/SPY, F/SPY, GE/SPY, GOOG/SPY, HPQ/SPY, IBM/SPY, INTC/SPY, KO/SPY, MRK/SPY, MSFT/SPY, ORCL/SPY, PFE/SPY, RIMM/SPY, T/SPY, TGT/SPY, VZ/SPY and WMT/SPY. The Commission subsequently approved options on the following Alpha Indexes in which the Target Component, as well as the Benchmark Component, is an ETF share: DIA/SPY, EEM/SPY, EWJ/SPY, EWZ/SPY, FXI/SPY, GLD/SPY, IWM/SPY, QQQ/SPY, SLV/SPY, TLT/SPY, XLE/SPY and XLF/SPY. *See* Securities Exchange Act Release No. 65149 (August 17, 2011), 76 FR 52729 (August 23, 2011) (SR–Phlx–2011–89).

[4] As noted above, the Commission has previously approved 31 Alpha Indexes for options trading. The NASDAQ OMX Group currently maintains and calculates three additional Alpha Indexes, for a total of 34, and may develop additional Alpha Indexes in the future. At this time, the Exchange proposes to list and trade only those Alpha Index-Linked Securities that are linked to the Specified Alpha Indexes identified herein. The Exchange may in the future request Commission approval to list and trade Alpha Index-Linked Securities based upon other Alpha Indexes.

[5] The total return measures performance (rate of return) of price appreciation plus dividends over any given evaluation period.

and the Benchmark Component of the Alpha Pair. To calculate the daily total return today of a Target Component or a Benchmark Component, respectively, the previous trading day's closing market price for the Target Component or Benchmark Component, respectively, would be subtracted from today's closing market price for the Target Component or Benchmark Component, respectively, to determine a price difference (the ''Price Difference''). The Price Difference would be added to any declared dividend, if today were an ''ex-dividend'' date, to yield the Price Plus Dividend Difference for the Target Component or the Benchmark Component, respectively.

The Price Plus Dividend Difference for the Target Component or Benchmark Component is then divided by the previous trading day's closing market price for the Target Component or Benchmark Component, and the result is rounded to four decimal places to yield the daily total return.

To calculate all Alpha Indexes, the daily total return for the Target Component and for the Benchmark Component is then added to the whole number one. This figure for the Target Component is then divided by the comparable figure for the Benchmark Component, and then multiplied by the previous trading day's closing Alpha Index value. The resulting level depicts the Target Component's total return performance for that day compared to the Benchmark Component's total return performance for that day.

The following example illustrates the Alpha Index calculation for ABC stock as against SPY.[6]

(Step 1.) For both ABC and SPY, the previous trading day's closing market price is subtracted from today's closing market price with the result added to any dividend declared today as the ''ex-dividend'' date. For example, today's closing price for ABC (214.01) minus the previous day's closing price (210.73) equals 3.28. Today is not an ex-dividend date for ABC; therefore, nothing is added to 3.28. Similarly, today's closing price for SPY (113.33) minus the previous trading day's closing price (111.44) equals 1.89. Today is not an ex-dividend date for SPY; therefore, nothing is added to 1.89.

(Step 2.) The step one result is divided by the previous trading day's closing market price and the new result is rounded, using simple rounding, to four decimal places to yield the daily total return. For ABC, 3.28 would be divided by 210.73 to yield a daily total return of 0.0156. Similarly, for SPY, 1.89 would be divided by 111.44 and yield a daily total return of 0.0170.

(Step 3.) The step two results above are added to the whole number one. For ABC, the daily total return of 0.0156 would be added to 1 for a result of 1.0156. For SPY the daily total return of 0.0170 would be added to 1 for a result of 1.0170.

(Step 4.) In order to calculate the Alpha Index, the 1.0156 ABC figure is divided by the 1.0170 SPY figure and then multiplied by the previous trading day's closing Alpha Index value. Thus, assuming in the example that the previous trading day's closing Alpha Index value was 100.00, today's closing Alpha Index value would be 99.86 ($1.0156/1.0170 \times 100.00 = 99.86$). The 99.86 index level reflects that ABC's total return performance today versus yesterday was $-.14\%$ relative to SPY.

In the case of a corporate event which eliminates one of the underlying components of an Alpha Pair, NASDAQ will cease calculation of the Alpha Index for that Alpha Pair in which case NASDAQ will commence delisting or removal proceedings pursuant to Rule 5712(c). In the case of a corporate event such as a two-for-one stock split that affects the price of one of the underlying components, NASDAQ will make an appropriate one-time adjustment to the price of the underlying component used in the calculation to ensure that the Alpha Index continues to reflect the daily total return of the component. For example, on the effective date of the two-for-one stock split, NASDAQ will multiply the resulting stock price by two in order to reconstitute the economic value of the stock on the day before the effective date. On the day following the effective date, the Alpha Index formula will revert to the base formula to compare daily returns.

To be eligible for listing, values of all Alpha Indexes underlying Alpha Index-Linked Securities must be disseminated at least once every second over the NASDAQ OMX Global Index Data Service (''GIDS'').[7]

Requirements With Respect to the Security

Alpha Index-Linked Securities listed and traded under proposed Rule 5712 would be required to meet the requirements of Exchange Rule 5710(a)–(j). Effectively, the only provision of Rule 5710 which would not apply to Alpha Index-Linked Securities is subsection (k), which specifies the index criteria for eligibility for listing and trading under Commission Rule 19b–4(e) as well as certain continued listing and delisting criteria. Pursuant to Rule 5712(a), all other provisions of Rule 5710 applicable to Equity Index-Linked Securities eligible for listing and trading pursuant to Rule 19b–4(e) shall apply to Alpha Index-Linked Securities.

Alpha Index Components

Proposed Nasdaq Rule 5712 would permit the listing and trading of Alpha Index-Linked Securities only on the Specified Alpha Indexes with respect to which the Target Component and Benchmark Component meet certain criteria. Specifically, at the initial listing of the Alpha Index-Linked Security, options on the Target Component and the Benchmark Component of the Alpha Index must also be listed and traded on the NASDAQ Options Market and must meet the requirements of Chapter IV, Section 3, Criteria for Underlying Securities, of the NASDAQ Options Market rules. Additionally, both the Target Component's and the Benchmark Component's trading volume (in all markets in which the Target Component or the Benchmark Component is traded) must have averaged at least 2,250,000 shares per day in the preceding twelve months.[8] No Alpha Index-Linked Security will be listed unless and until options overlying each of the Alpha Index component securities have been listed and traded on a national securities exchange with an average daily options trading volume during the three previous months of at least 10,000 contracts.[9]

Following the initial listing of the Alpha Index-Linked Security, options on both the Target Component and the Benchmark Component of the Alpha Index must continue to meet the continued listing standards set forth by Chapter IV, Section 4, Withdrawal of Approval of Underlying Securities, of the NASDAQ Options Market rules. Additionally, both the Target Component's and the Benchmark Component's trading volume (in all markets in which the Target Component or Benchmark Component is traded) must have averaged at least 2,000,000 shares per day in the preceding twelve months.[10] Following the listing of an

[6] Daily total return values and Alpha Index values will be updated based upon prices of each reported transaction in the primary listing market. In the example below, today's closing prices are used simply for purposes of illustration.

[7] *See http://www.nasdaqtrader.com/Trader.aspx?id=globalindexDS* for a description of the NASDAQ OMX Global Index Data Service.

[8] The 2,250,000 shares per day volume requirement is the same volume requirement applicable to Target Components and Benchmark Components of Alpha Index Options listed on PHLX.

[9] *See* Rule 5712(a).

[10] The 2,000,000 shares per day continued listing volume requirement is the same continued listing

Alpha Index-Linked Security, options on each of the component securities of the Alpha Index must continue to meet the options average daily volume standard set forth in Rule 5712(a)(ii).[11]

Delisting of Alpha Index-Linked Securities

Rule 5712(c) provides for delisting of Alpha Index-Linked Securities. Delisting or removal proceedings will be commenced (unless the Commission has approved the continued trading) with respect to any Alpha Index-Linked Security that was listed pursuant to Rule 5712 if any of the standards set forth in Rule 5712(b) with respect to the underlying Alpha Index are not continuously maintained. Additionally, NASDAQ will commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject Alpha Index-Linked Security) under any of the following circumstances: (i) If the aggregate market value or principal amount of the Alpha Index-Linked Securities publicly held is less than $400,000; (ii) if the value of the underlying Alpha Index is no longer calculated or widely disseminated on at least a one second basis, provided, however, that if the official index value does not change during some or all of the period when trading is occurring on NASDAQ then the last calculated official index value must remain available throughout NASDAQ trading hours; or (iii) if such other event shall occur or condition exists which in the opinion of NASDAQ makes further dealings on NASDAQ inadvisable. These provisions proposed with respect to delisting track, to the extent applicable, the Rule 5710(k)(i)(B) delisting provisions applicable to Equity Index-Linked Securities listed pursuant to Commission Rule 19b–4(e). Section (c)(iv) of Rule 5712 would provide for the commencement of delisting or removal proceedings if an underlying Alpha Index fails to satisfy the maintenance standards or conditions for such index as set forth by the Commission in its order under Section 19(b)(2) of the Act approving the index for the trading of options or other derivatives.

Trading Rules and Procedures

Trading in Alpha Index-Linked Securities will be governed by the same trading rules and procedures that apply to other Equity Index-Linked Securities listed pursuant to Nasdaq Rule 5710. Moreover, pursuant to Nasdaq Rule 5710(i), FINRA will implement on behalf of NASDAQ written surveillance procedures for Alpha Index-Linked Securities. Surveillance will be in place for the launch of Alpha Index-Linked Securities. Pursuant to Nasdaq Rule 5710(j), Alpha Index-Linked Securities will be treated as equity instruments and for purposes of fee determination shall be deemed and treated as Other Securities. Pursuant to Nasdaq Rule 5710(h), if the value of an Alpha Index is not being disseminated as required, the Exchange may halt trading during the day on which such interruption occurs and will halt trading no later than the beginning of trading following the trading day when the interruption commenced if such interruption persists at this time.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act,[12] in general, and furthers the objectives of section 6(b)(5),[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and 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.

Specifically, NASDAQ believes that the proposed rule change would expand the investment choices available to market participants. NASDAQ's listing requirements as proposed herein are generally the same as those previously approved for listing Equity Index-Linked Securities on NASDAQ pursuant to Rule 19b–4(e), supplemented by listing standards tailored specifically to Equity Index-Linked Securities based upon Alpha Indexes, and, consequently, the proposed rule change is consistent with the protection of investors and the public interest. Additionally, the proposal is designed to prevent fraudulent and manipulative acts and practices, as the proposed Alpha Index-Linked Securities are subject to existing, previously-approved NASDAQ rules governing trading in Equity Index-Linked Securities. The proposal also furthers the objectives of Section 6(b)(5) in that Nasdaq Rule 2310, which imposes suitability obligations on NASDAQ members with respect to recommending transactions to customers, will apply to Alpha Index-Linked Securities. Finally, NASDAQ represents that FINRA, on behalf of NASDAQ, will have in place surveillance procedures that are adequate to properly monitor trading in the Alpha Index-Linked Securities and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via the Intermarket Surveillance Group, ''ISG'', from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Target Component and the Benchmark Component, as well as options on the Target Component and on the Benchmark Component, are traded on exchanges which are ISG members.

The proposal is also designed to promote just and equitable principles of trade by way of initial and continued listing standards which, if not maintained, will result in the discontinuation of trading in the affected products. These requirements, together with the applicable NASDAQ equity trading rules (which apply to the proposed Alpha Index-Linked Securities), ensure that no investor would have an unfair advantage over another respecting the trading of the products. On the contrary, all investors will have the same access to, and use of, information concerning the products and trading in the products, all to the benefit of public customers and the marketplace as a whole.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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

volume requirement applicable to Target Components and Benchmark Components of Alpha Index Options listed on PHLX.

[11] *See* Rule 5712(b).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

(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–2012–058 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–2012–058.* 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–2012–058 and should be submitted on or before July 18, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–15633 Filed 6–26–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67232; File No. SR–CME–2012–24]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend CME Rule 802 Regarding CME's Capital Contribution to the Base Guaranty Fund

June 21, 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 June 9, 2012, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which items have been prepared primarily by CME. The Commission is publishing this Notice and Order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CME proposes to amend CME Rule 802 regarding CME's capital contribution to the financial safeguards package that includes its Base Guaranty Fund (that is, for products other than credit default swaps and interest rate swaps). The text of the proposed rule change is available at the CME's Web site at *http://www.cmegroup.com/market-regulation/files/SEC_19b–4_12–24.pdf,* at the principal office of CME, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose 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 III below. CME 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 Purpose of, and Statutory Basis for, the Proposed Rule Change

CME proposes to adopt revisions to CME Rule 802 that relate to CME's capital contribution to the financial safeguards package that includes its Base Guaranty Fund (that is, for products other than credit default swaps and interest rate swaps). More specifically, CME proposes to amend CME Rule 802.B (Satisfaction of Clearing House Obligations) to make CME's capital contribution $100 million to the Base Guaranty Fund financial safeguards package. CME notes that it has already certified the proposed changes that are the subject of this filing to the CFTC, in Submission 12–184.

CME believes the proposed change is consistent with the requirements of the Act including Section 17A of the Act because it helps to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible and it protects investors and the public interest. According to CME, the proposed rule change accomplishes the objectives of the Act by offering enhancements to the financial safeguards package that applies to CME's Base Guaranty Fund.

B. Self-Regulatory Organization's Statement on Burden on Competition.

CME does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others.

CME has not solicited and does not intend to solicit comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. 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 may be submitted by using the Commission's

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(2).

[2] 17 CFR 240.19b–4.

[3] The Commission has modified the text of the summaries prepared by CME.

Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or send an email to *rule-comment@sec.gov.* Please include File No. SR–CME–2012–24 on the subject line.

• Paper comments should be sent 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–CME–2012–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CME. 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–CME–2012–24 and should be submitted on or before July 18, 2012.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Section 19(b) of the Act [4] 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. The Commission finds that the proposed rule change is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act, and the rules and regulations thereunder applicable to CME.[5] Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) [6] of the Act which requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and to protect investors and the public interest because the proposed rule change should allow CME enhance the financial safeguards package that applies to CME's Base Guaranty Fund.

In its filing, CME requested that the Commission approve this proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing. CME has articulated three reasons for so granting approval. First, CME cites as a reason for this request CME's operation as a DCO, which is subject to regulation by the CFTC under the CEA. Second, CME also cites that the proposed rule changes relate solely to FX swap products and therefore relate solely to its swaps clearing activities and do not significantly relate to the CME's functions as a clearing agency for security-based swaps. Third, CME states that not approving this request on an accelerated basis will have a significant impact on the futures and swaps clearing business of the CME as a designated clearing organization.

The Commission finds good cause for granting approval of the proposed rule change prior to the thirtieth day after publication of the notice of its filing because: (i) The proposed rule change does not significantly affect any securities clearing operations of the clearing agency (whether in existence or contemplated by its rules) or any related rights or obligations of the clearing agency or persons using such service; (ii) the clearing agency has indicated that not providing accelerated approval would have a significant impact on its business as a designated clearing organization; and (iii) the activity relating to the non-security clearing operations of the clearing agency for which the clearing agency is seeking approval is subject to regulation by another federal regulator.

V. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR–CME–2012–24) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–15635 Filed 6–26–12; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78s(b).

[5] 15 U.S.C. 78q–1. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67237; File No. SR–NYSEArca–2012–66]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of iShares Copper Trust Pursuant to NYSE Arca Equities Rule 8.201

June 22, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 19, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, 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 list and trade shares of iShares Copper Trust (the ''Trust'') pursuant to NYSE Arca Equities Rule 8.201. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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,

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 list and trade shares (''Shares'') of the Trust under NYSE Arca Equities Rule 8.201. Under NYSE Arca Equities Rule 8.201, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges (''UTP'') ''Commodity-Based Trust Shares.'' [4] The Commission has previously approved listing on the Exchange under NYSE Arca Equities Rule 8.201 of other issues of Commodity-Based Trust Shares. The Commission has approved listing on the Exchange of the streetTRACKS Gold Trust and iShares COMEX Gold Trust.[5] Prior to their listing on the Exchange, the Commission approved listing of the streetTRACKS Gold Trust on the New York Stock Exchange (''NYSE'') and listing of iShares COMEX Gold Trust on the American Stock Exchange LLC (now known as ''NYSE MKT LLC'').[6] In addition, the Commission has approved trading of the streetTRACKS Gold Trust and iShares Silver Trust on the Exchange pursuant to UTP.[7] The Commission also has approved listing of the iShares Silver Trust on the Exchange [8] and, previously, listing of the iShares Silver Trust on the American Stock Exchange LLC.[9] In addition, the Commission has approved listing on the Exchange of the following issues of Commodity-Based Trust Shares: ETFS Silver Trust, the ETFS Gold Trust, the ETFS Platinum Trust, the ETFS Palladium Trust, the ETFS Precious Metals Basket Trust, and the ETFS White Metals Basket Trust.[10]

The Trust will issue Shares which represent units of fractional undivided beneficial interest in and ownership of the Trust. The investment objective of the Trust is for the Shares to reflect the value of the assets owned by the Trust at that time less the Trust's expenses and liabilities.

BlackRock Asset Management International Inc. is the sponsor of the Trust (''Sponsor''),[11] The Bank of New York Mellon is the trustee of the Trust (''Trustee''),[12] and Metro International Trade Services LLC is the custodian of the Trust (''Metro'' or the ''Custodian'').[13]

The Exchange represents that the Shares satisfy the requirements of NYSE Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.[14]

According to the Registration Statement, the objective of the Trust is for the value of the Shares to reflect, at any given time, the value of copper owned by the Trust at that time, less the Trust's expenses and liabilities. The Trust will not be actively managed. It will not engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the price of copper. The Trust will receive copper deposited with it in exchange for the creation of blocks of 2,500 Shares (''Baskets''), will sell copper as necessary to cover the Trust expenses and other liabilities and will transfer copper to Authorized Participants (as described below) in exchange for Baskets surrendered to it for redemption.

Although the return, if any, of an investment in the Shares will be subject to the additional expense of the Sponsor's fee and other costs and expenses (as described in the Registration Statement) not assumed by the Sponsor which would not be incurred in the case of a direct investment in copper, the Shares are intended to constitute a simple and cost-effective means of making an investment similar to an investment in copper. While the Shares will not be the exact equivalent of an investment in copper, they will provide investors with an alternative that allows a level of participation in the copper market through the securities market.

According to the Registration Statement, the Trust will not hold or trade in commodity interests regulated by the Commodity Exchange Act (''CEA''),[15] as administered by the Commodity Futures Trading Commission (''CFTC''). Furthermore, the Trust is not a commodity pool for purposes of the CEA, and neither the Sponsor nor the Trustee is subject to regulation by the CFTC as a commodity pool operator, or a commodity trading advisor.

Copper Market Overview [16]

Copper is a major base metal. The Registration Statement states that, according to the U.S. Geological Survey,

[4] Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

[5] *See* Securities Exchange Act Release No. 56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR–NYSEArca–2007–76) (approving listing and trading on the Exchange of the streetTRACKS Gold Trust); Securities Exchange Act Release No. 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR–NYSEArca–2007–43) (order approving listing and trading on the Exchange of iShares COMEX Gold Trust).

[6] *See* Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22) (order approving listing and trading of streetTRACKS Gold Trust on NYSE); Securities Exchange Act Release No. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR–Amex–2004–38) (order approving listing and trading of iShares COMEX Gold Trust on the American Stock Exchange LLC).

[7] *See* Securities Exchange Act Release Nos. 53520 (March 20, 2006), 71 FR 14977 (March 24, 2006) (SR–PCX–2005–117) (approving trading on the Exchange pursuant to UTP of the iShares Silver Trust); 51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (SR–PCX–2004–117) (approving trading on the Exchange of the streetTRACKS Gold Trust pursuant to UTP).

[8] *See* Securities Exchange Act Release Nos. 58956 (November 14, 2008), 73 FR 71074 (November 24, 2008) (SR–NYSEArca–2008–124) (approving listing and trading on the Exchange of the iShares Silver Trust)).

[9] *See* Securities Exchange Act Release No. 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR–Amex–2005–72) (approving listing and trading on the American Stock Exchange LLC of the iShares Silver Trust).

[10] *See* Securities Exchange Act Release Nos. 59781 (April 17, 2009), 74 FR 18771 (April 24, 2009) (SR–NYSEArrca[sic]–2009–28) (order approving listing and trading on the Exchange of ETFS Silver Trust); 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40) (order approving listing and trading on the Exchange of ETFS Gold Trust); 61219 (December 22, 2009), 74 FR 68886 (December 29, 2009) (SR–NYSEArca–2009–95) (order approving listing and trading on the Exchange of ETFS Platinum Trust); 61220 (December 22, 2009), 74 FR 68895 (December 29, 2009) (order approving listing and trading on the Exchange of ETFS Palladium Trust); 62692 (August 11, 2010), 75 FR 50789 (August 17, 2010) (order approving listing and trading on the Exchange of ETFS Precious Metals Basket Trust); 62875 (September 9, 2010), 75 FR 56156 (September 15, 2010) (order approving listing and trading on the Exchange of ETFS White Metals Basket Trust).

[11] The Sponsor has agreed to assume the following administrative and marketing expenses incurred by the Trust: The Trustee's fee, the Custodian's fee, NYSE's listing fees, Commission registration fees, printing and mailing costs, audit fees and expenses and up to $100,000 per annum in legal fees and expenses. The Sponsor also has paid or will pay the costs of the Trust's organization and the initial sale of the Shares, including the applicable Commission registration fees.

[12] The Trustee is responsible for the day-to-day administration of the Trust. The responsibilities of the Trustee include (1) Processing orders for the creation and redemption of Baskets (as defined below); (2) coordinating with the Custodian the receipt or transfer of copper by the Trust in connection with each issuance and redemption of Baskets; (3) calculating the net asset value (''NAV'') and the adjusted NAV of the Trust on each business day; and (4) selling the Trust's copper as needed to cover the Trust's expenses. In addition, the Trustee will prepare the financial statements of the Trust.

[13] The Custodian will be responsible for safekeeping the copper deposited into the Trust in connection with the creation of Baskets.

[14] With respect to application of Rule 10A–3 (17 CFR 240.10A–3) under the Securities Exchange of 1934 (''Act'') (15 U.S.C. 78a), the Trust relies on the exemption contained in Rule 10A–3(c)(7).

[15] 7 U.S.C. 1 *et seq.*

[16] *See* Pre-Effective Amendment No. 4 to Form S–1 for iShares Copper Trust, filed with the Commission on September 2, 2011 (No. 333–170131) (''Registration Statement''). The descriptions of the Trust, the Shares and the copper market contained herein are based, in part, on the Registration Statement.

a scientific agency of the United States government, the copper market is the third largest metals market in terms of physical volume. Much of the copper traded in the world is traded across organized exchanges, with the major exchanges located in London, Shanghai, and New York. There also is an active dealer market that trades physical and forward copper off of the exchanges, as well as non-exchange traded options. The price of copper generally reflects copper supply and demand, underlying production costs, cumulative levels of copper inventories, and investor sentiment toward copper market prospects and broader economic trends, as well as actual economic conditions such as industrial production, real manufacturing output, inflation, and exchange rates.

Copper mine supplies are concentrated on a regional basis, while demand is more geographically dispersed, as is typical in extractive industries. The copper supply chain—from raw copper concentrated ore from mines to upgraded copper products—is highly dependent on global trade. According to CPM Group, a commodities market research firm, the majority of copper mine production is in the Americas, accounting for roughly 55% of global output in 2011, while roughly 46% production is performed in Asia.

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Total World Copper Supply and Demand[17]

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
						Thousand Tonnes					
Mine Production											
Chile	4,697	4,585	4,942	5,380	5,240	5,293	5,534	5,271	5,400	5,370	5,176
Peru	716	845	849	1,029	995	1,035	1,185	1,254	1,276	1,236	1,219
China	582	569	609	738	750	862	924	1,065	1,045	1,145	1,251
U.S.A.	1,328	1,141	1,124	1,153	1,123	1,182	1,163	1,296	1,182	1,099	1,113
Indonesia	1,038	1,164	1,011	837	1,048	806	786	644	998	863	519
Other	5,273	5,274	5,222	5,457	5,766	5,811	5,891	5,998	5,996	6,275	6,726
Total Mine Production	**13,634**	**13,577**	**13,757**	**14,594**	**14,922**	**14,990**	**15,483**	**15,527**	**15,897**	**15,989**	**16,005**
Total percent change	*3.2%*	*-0.4%*	*1.3%*	*6.1%*	*2.2%*	*0.5%*	*3.3%*	*0.3%*	*2.4%*	*0.6%*	*0.1%*
Refined Metal Production											
Primary Refined Production	13,746	13,436	13,487	13,848	14,411	14,678	15,1910	15,418	15,435	15,749	16,113
Secondary Refined Production	1,892	1,918	1,785	2,069	2,161	2,613	2,743	2,823	2,818	3,249	3,517
Total Refined Metal Production	**15,638**	**15,354**	**15,272**	**15,917**	**16,572**	**17,291**	**17,934**	**18,241**	**18,253**	**18,998**	**19,630**
Total percent change	*6.0%*	*-1.8%*	*-0.5%*	*4.2%*	*4.1%*	*4.3%*	*3.7%*	*1.7%*	*0.1%*	*4.1%*	*3.3%*
Consumption											
China	2,348	2,772	3,123	3,263	3,755	3,920	4,678	5,454	6,695	7,522	7,712
European Union	4,162	3,983	3,934	4,111	3,856	4,256	4,060	4,629	3,473	3,972	4,186
U.S.A.	2,665	2,395	2,350	2,435	2,256	2,099	2,130	2,009	1,593	1,752	1,798
Japan	1,165	1,179	1,234	1,292	1,228	1,284	1,256	1,185	852	1,061	1,032
South Korea	864	948	924	949	868	829	858	816	908	857	766
Other	3,742	3,954	4,109	4,659	4,906	4,969	5,058	4,062	4,168	4,211	4,495
Consumption of Refined Copper[1,2]	**14,946**	**15,231**	**15,674**	**16,710**	**16,870**	**17,358**	**18,040**	**18,154**	**17,688**	**19,375**	**19,988**
Total percent change	*-1.2%*	*1.9%*	*2.9%*	*6.6%*	*1.0%*	*2.9%*	*3.9%*	*0.6%*	*-2.6%*	*9.5%*	*3.2%*
Refined Copper Balance[2]	**692**	**123**	**-402**	**-793**	**-298**	**-67**	**-106**	**87**	**565**	**-377**	**-358**
Exchange Metal Stocks[3]	1,138	1,293	806	124	156	253	238	390	688	568	544
No. weeks of consumption	**4.0**	**4.4**	**2.7**	**0.4**	**0.5**	**0.8**	**0.7**	**1.1**	**2.0**	**1.5**	**1.4**
Annual Average LME Cash Price (US$/mt)	**$ 1,578**	**$ 1,557**	**$ 1,777**	**$ 2,876**	**$ 3,715**	**$ 6,730**	**$ 7,126**	**$ 5.164**	**$ 6,952**	**$ 7,539**	**$ 8.811**
% Change Year Ago	*-13.0%*	*-1.3%*	*14.1%*	*61.8%*	*29.2%*	*81.2%*	*-2.4%*	*-25.7%*	*-2.4%*	*46.07%*	*16.9%*

Copper Market Participants

The copper market includes a diversified group of market participants. Both the physical and financial copper markets consist of primary and secondary producers, fabricators, manufacturers and end-use consumers, physical traders and merchants, the banking sector, and the investment community.

Physical traders and merchants generally facilitate the domestic and international trade of copper supplies along the value chain and support the distribution of supplies to consumers. Banking institutions may provide market participants an assortment of services to assist copper market transactions. On the producer level, the banking sector may facilitate project financing, off-take agreements (agreements to purchase/sell all or a portion of a producer's output), over-the-counter (''OTC'') transactions, hedging services, and price risk management. In addition to these and other services, consumers may seek guidance from the banking sector on commodity supply management.

According to the Registration Statement, starting in the late 1970s, changes in bank regulation in many industrialized nations allowed banks to assume many of the functions traditionally fulfilled by traders and commodities merchants. Non-banking merchants continue to operate side by side with banks that have either acquired or developed internal copper trading capacity.

The investment community is composed of non-commercial market participants engaged in investment in copper or speculation about copper prices. This may range from large-scale institutional investors to hedge funds to small-scale retail investors. In addition, the investment community includes sovereign wealth funds as well as other governmental bodies that stockpile metal for strategic purposes.

Operation of the Copper Market

The copper market is comprised of sales directly by producers and refiners to users, and by physical sales transacted by merchants, dealers, and trading banks. There are spot sales in the physical market, as well as forward contracts, options contracts, and other derivative transactions. A major portion of annual copper production and use is covered through physical transactions, many times through renewable annual supply contracts. Additional metal trades through commodities exchanges, and there is an interaction between the OTC market and exchange operations.

[17] Table Notes (Source: CPM Group May 2011). *See also* Registration Statement.

1. Includes consumption of refined copper scrap, not the direct consumption of copper scrap.

2. Adjusted for estimated destocking and restocking in government strategic stockpiles. May not include all changes to government stockpiles.

The Price of Copper

Copper prices have historically been viewed by some economists as a key indicator of global industrial activity, given copper's prominence in major economic sectors such as construction, transportation, and electrical and electronic products. While copper prices are expected to reflect the fundamentals directly related to its market, prices may also reflect current and expected economic conditions less closely related to the copper market such as exchange rates, inflation, and global economic cycles. The price of copper is volatile and fluctuations are expected to have an impact on the value of the Shares. Historical trends in copper prices are not reliable indicators of future movements.

Copper has been traded on the London Metal Exchange (''LME'') since its inception in 1877. New contracts have been added over the last century as the LME has responded to changes in supply and demand. The current specifications for grade A copper were introduced in April 1986.

Over-the-Counter Market

Physical traders, merchants, and banks participate in OTC spot, forward, option, and other derivative transactions for copper. OTC contracts are principal-to-principal agreements traded and negotiated privately between two principal parties, without going through an exchange or other intermediary. As such, both participants in OTC deals are subject to counter-party risk, including credit and contractual obligations to perform. The OTC derivative market remains largely unregulated with respect to public disclosure of information by the parties, thus providing confidentiality among principals.

The terms of OTC contracts are not standardized and market participants have the flexibility to negotiate all terms of the transaction, including delivery specifications and settlement terms. The OTC market facilitates long-term transactions, such as life-of-mine off-take agreements [18] which otherwise could be constrained by contract terms in a futures exchange.

Futures Exchanges

According to the Registration Statement, the LME is the longest standing exchange trading copper futures, and continues to be the platform with the greatest number of open copper futures and options contracts (open interest). The COMEX (a division of CME Group, Inc.), Shanghai Futures Exchange (''SHFE''), and the recently launched Multi Commodity Exchange of India (''MCX'') also trade copper futures. At the end of March 2012, the LME held roughly 64% of copper open interest across the four futures exchanges with copper contracts (adjusted for lot size).[19]

The London Metal Exchange

In accordance with LME Trading Regulations, the LME official cash seller price commonly serves as the settlement prices for delivery of warranted Grade A Copper (copper held in a lot at LME approved warehouses that meets contract conditions specified by the LME for the warehouse to issue a copper warrant). Warrants, which are documents representing possession, are used as the means of delivering metal or plastics under LME contracts. The ownership of copper represented by warrants is transferred through LMEsword, an electronic transfer system for the purchase and sale of exchange issued warrants. Each warrant is invoiced at the contract weight, which is permitted to vary +/−2% from the specified 25 tonne lot of copper. Only registered LME copper brands are approved for delivery. Producers must follow exchange guidelines and meet specification requirements to maintain their brand registration. Currently, more than 75 brands of copper are listed with the LME. Failure to comply with LME requirements may result in the delisting of a brand. Purity levels specified for deliverable LME copper must be greater than 99.99% copper, which meets or exceeds purity levels specified by other copper futures exchanges. The brand is the main determinant for distinguishing whether or not copper deliverable on the LME is deliverable for other exchange contracts. Generally, the difference in minimum purities required by the LME, SHFE, COMEX, and MCX is minimal.

The LME falls under the jurisdiction of the United Kingdom Financial Services Authority (''FSA''). The FSA is responsible for ensuring the financial stability of the exchange members businesses, whereas the LME is largely responsible for the oversight of day-to-day exchange activity, including conducting arbitration proceedings under the LME arbitration regulations.

Through the establishment of the LMEsword system, the LME facilitates the orderly transfer of LME warrants and the reporting of inventories. In April 2010, the previous SWORD system operated for the LME by LCH Clearnet was replaced by the current LMEsword system in order to bring the management system under direct exchange control and regulation.

According to the Registration Statement, the LME is one of the world's most important non-ferrous metals markets; it combines around-the-clock inter-office telephone trading, electronic trading and open outcry trading that includes, for each metal traded on the exchange, four five-minute sessions taking place around the ring of the exchange (each such session, a ''ring''). In the case of copper, the first ring takes place between 12:00 and 12:05 p.m. (London time), and the second one between 12:30 and 12:35 p.m. (London time). At the close of the second ring, the LME Quotations Committee [20]

[18] A life-of-mine off-take agreement is an agreement between a producer and a buyer to purchase/sell portions of the producer's future production over the life of the operation. Off-take agreements are commonly negotiated prior to the construction of a project as they can assist in obtaining financing by showing future revenue streams.

[19] As of March 29, 2012, LME open interest for copper was 6.9 million tonnes. Copper futures volume on the LME for 2011 was 862.6 million tonnes. As of March, 29, 2012, COMEX open interest for copper was 1.7 million tonnes. Copper futures volume on the COMEX for 2011 was 141.7 million tonnes. As of March 29, 2012, SHFE open interest for copper was 2.2 million tonnes. Copper futures volume on the SHFE for 2011 was 483.4 million tonnes. As of March 29, 2012, MCX open interest for copper was 36,510 tonnes. Copper futures volume on MCX for 2011 was 33.0 million tonnes.

According to the Registration Statement, the LME, the SHFE and the COMEX release regular, daily or weekly, publicly available reports on the weight of copper held in the area of the warehouse registered with the respective exchange. Each exchange also provides data on the amount of metal with warrants in the area of the warehouse registered with the exchange. The COMEX reports the quantity of warranted and non-warranted metal (metal without a warrant held in the area of the warehouse approved by the COMEX). The LME reports the quantity of metal ''on warrant'' and ''off warrant'' (metal where the warrant has been surrendered and is waiting to be delivered from the area of the warehouse approved by the LME). The SHFE reports the quantity of ''on warrant'' metal and deliverable metal. Deliverable metal, which includes ''on warrant'' metal, is the total metal held in the area of the warehouse approved by the SHFE. The warehouses are not owned or operated by the exchanges, but are registered with the exchanges as being suitable to hold exchange-registered metal. Metal stored in the area of the warehouse approved by the exchange but that is not registered with an exchange is not reported in exchange inventory data. Industry groups and trade associations publish proprietary estimates of copper inventories held by producers, consumers, and merchants using data collected from their constituent members with a one or more month lag. Currently, there are no comprehensive statistics or data on physical copper stockpiles held by all commercial and non-commercial market participants.

[20] The LME Quotations Committee is made up of five staff from the Executive's Market Operations department and is defined in the LME Rulebook as ''a committee authorized by the Directors to be responsible for determining Closing Prices and Settlement Prices''. Under rules currently in effect, the LME Quotations Committee determines the

Continued

determines the last bid and offered prices for contracts that trade on the LME. If there is consensus among the members of the LME Quotations Committee as to the last prices, the prices so determined are displayed as provisional prices within five minutes from the end of the ring. If no objections are made to the provisional prices during the next five minutes, such prices become ''official'' at 12:45 p.m. (London time). If no consensus as to prices is reached within the five-minute period following the end of the second ring, no provisional price is announced and the LME Quotations Committee convenes at 1:15 p.m. (London time) to determine the relevant prices, which are then announced at 1:20 p.m. (London time).

Shanghai Futures Exchange

The SHFE is a self-regulatory body under the supervision and governance of the China Securities Regulatory Commission (''CSRC''). The SHFE is the day-to-day overseer of exchange activity, and is expected to carry out regulation as per the laws established by the CSRC. The CSRC meanwhile serves as the final authority on exchange regulation and policy development and ultimately determines the effectiveness of the SHFE as a regulatory entity. It has the right to overturn or revoke the SHFE's regulatory privileges at any time.

COMEX

Commodity futures and options traded on the COMEX are subject to regulation by its parent, CME Group's Market Regulation Oversight Committee (''MROCC''), under CFTC rules.[21] The MROCC is a self-regulatory body created in 2004 to actively ensure competitive and financially sound trading activity on the CME and its subsidiary exchanges.

Multi Commodity Exchange of India

Regulation of the MCX falls under the responsibility of the Governing Board of the MCX and the Forward Markets Commission of India pursuant to the Forward Contracts (Regulation) Act of 1952 and amendments made thereafter.

Trust Expenses

According to the Registration Statement, the Trust's main recurring expenses are expected to be the Sponsor's fee and the Custodian's fee. The Sponsor's fee will be accrued daily and paid monthly in arrears at an annualized rate equal to a specified percentage of the adjusted NAV of the Trust. The Trustee will, when directed by the Sponsor, and, in the absence of such direction, may, in its discretion, sell copper in such quantity and at such times, as may be necessary to permit payment of the Sponsor's fee, the Custodian's fee and of Trust expenses or liabilities not assumed by the Sponsor.

Cash held by the Trustee pending payment of the Trust's expenses will not bear any interest. Each sale of copper by the Trust will be a taxable event to Shareholders.

Deposit of Copper; Issuance of Baskets

According to the Registration Statement, at the time of creation of the Trust, the Trust will issue to Goldman, Sachs & Co., as the ''Initial Purchaser'', a specified number of Baskets of 2,500 Shares each (the ''Initial Shares''), in exchange for an in-kind per-Basket deposit with the Custodian of 25 tonnes of copper (equivalent to a per-Share consideration of 10 kilograms of copper).[22] The Trust then expects to create and redeem Shares on a continuous basis but only in blocks of five or more Baskets of 2,500 Shares each. Upon the deposit of the corresponding amount of copper with the Custodian and the payment of the Trustee's applicable fee and of any expenses, taxes or charges (such as sales, stamp taxes or stock transfer taxes or fees) and subject to the payment of any applicable fees to the Custodian, the Trustee will deliver the appropriate number of Baskets to the Depository Trust Company (''DTC'') account of the depositing Authorized Participant.[23] Only Authorized Participants can deposit copper and receive Baskets in exchange. The Sponsor and the Trustee will maintain a current list of Authorized Participants.

Before making a deposit, the Authorized Participant must deliver to the Trustee a written purchase order indicating the number of Baskets it intends to acquire. In exchange for each Basket purchased, an Authorized Participant must deposit the Basket Copper Amount[24] announced by the Trustee on the first business day on which the LME Bid Price[25] is announced following the date of receipt of the purchase order. However, orders received by the Trustee after 3:59 p.m. E.T. on a business day will be treated as received on the next following business day.

In connection with the creation of Baskets, only copper that meets the requirements to be delivered in settlement of copper futures contracts traded on the LME and are eligible to be placed on Warrant at the time of delivery to the Trust, may be delivered to the Trust in exchange for Shares. The Authorized Participant must specify and choose where the Basket Copper Amount will be deposited and must deliver such Basket Copper Amount to any of the Trust's accounts at the Custodian.

Because copper usually trades in lots of 25 tonnes, with plus or minus 2% deviations being accepted in the industry, an Authorized Participant may not find readily available in the market the exact Basket Copper Amount needed in connection with the issuance of a new Basket. To facilitate the issuance of Baskets, the Sponsor has arranged for J. Aron & Company (''J. Aron''), an

official cash seller and settlement price to be the last offer in the second ring of the morning session on the LME, if such prices were available. Otherwise, the LME Quotations Committee has the discretion to decide these prices. The cash price references the warehouse business day, which reflects copper that will be available for delivery two business days forward from the trading day.

[21] Copper is traded over two CME platforms: CME Globex and Open Outcry. CME Globex, which offers electronic trading, operates Sunday through Friday, 6:00 p.m., Eastern Time (''E.T.'') through 5:15 p.m. E.T. with a 45-minute break each day beginning at 5:15 p.m. E.T. The Open Outcry operates Monday through Friday 8:10 a.m. E.T. through 1:00 p.m. E.T.

[22] According to the Registration Statement, the Initial Purchaser will be an underwriter with respect to the Initial Shares. The Initial Purchaser intends to make a public offering of the Initial Shares at a price per Share that will vary depending, among other factors, on the NAV and the trading price of the Shares on NYSE Arca at the time of the offer. Shares offered by the Initial Purchaser at different times may have different offering prices. The Initial Purchaser will not receive from the Trust, the Sponsor or any of their affiliates any fee or other compensation in connection with their sale of the Initial Shares to the public; however, the Sponsor may reimburse to the Initial Purchaser certain fees and expenses incurred in connection with the offering of the Initial Shares.

[23] The Custodian may keep the Trust's copper at locations within or outside the United States that are agreed from time to time by the Custodian and the Trustee. As of the date of the Registration Statement, the Custodian is authorized to hold copper owned by the Trust at warehouses located in East Chicago (Indiana), Hull and Liverpool (England), Mobile (Alabama), New Orleans (Louisiana), Saint Louis (Missouri), Rotterdam (the Netherlands), and Antwerp (Belgium). Unless otherwise instructed by the Trustee, no copper held by the Custodian on behalf of the Trust may be on Warrant. Unless otherwise agreed in writing by the Trustee, each of the warehouses where the Trust's copper will be stored must be LME-approved at the time copper is delivered to the Custodian for storage in such warehouse.

[24] The ''Basket Copper Amount'' is the amount of copper (measured in tonnes and fractions thereof), determined on each business day by the Trustee, which Authorized Participants must transfer to the Trust in exchange for a Basket, or are entitled to receive in exchange for each Basket surrendered for redemption.

[25] The ''LME Bid Price'' on any day, is the official price (cash, buyer) for copper announced by the LME on such day. Such price is disseminated at 1:20 p.m. London Time and represents the price that a buyer is willing to pay to receive a warrant in any warehouse within the LME system.

international commodities dealer and subsidiary of The Goldman Sachs Group, Inc. (which owns the Custodian), to stand ready to (i) make available for sale for cash to an eligible Authorized Participant any fractional amounts of copper needed to meet the obligation to transfer to the Trust the exact Basket Copper Amount in exchange for each Basket purchased from the Trust; and (ii) purchase from an eligible Authorized Participant for cash any amount by which the lots of copper such Authorized Participant intends to use in connection with an issuance of a Basket exceed the corresponding Basket Copper Amount.[26]

The Basket Copper Amount necessary for the creation of a Basket changes from day to day. The initial Basket Copper Amount, in effect on the day of creation of the Trust, will be 25 tonnes of copper. On each day that NYSE Arca is open for regular trading, the Trustee will adjust the quantity of copper constituting the Basket Copper Amount as appropriate to reflect sales of copper, any loss of copper that may occur, and accrued expenses. The computation will be made by the Trustee as promptly as practicable after 4:00 p.m. E.T. The Basket Copper Amount so determined will be communicated via facsimile or electronic mail message to all Authorized Participants and will be available on the Sponsor's Web site for the Shares.

No Shares will be issued unless and until the Custodian has informed the Trustee that it has received on behalf of the Trust the corresponding amount of copper. All taxes and fees incurred in connection with the delivery of copper to the Custodian in exchange for Baskets (including any applicable taxes and any fees incurred in connection with placing off Warrant) [27] will be the sole responsibility of the Authorized Participant making such delivery.

Redemption of Baskets; Withdrawal of Copper

Authorized Participants, acting on authority of a registered holder of Shares, may surrender five or more Baskets for redemption, each in exchange for the Basket Copper Amount announced by the Trustee on the first business day on which the LME Bid Price is announced following the date of receipt of the redemption order. However, orders received by the Trustee after 3:59 p.m. E.T. on a business day will be treated as received on the next following business day.

Upon the surrender of the Shares comprising the number of Baskets to be redeemed and the payment by the Authorized Participant of the Trustee's applicable fee and of any expenses, taxes, or charges (such as fees owed to the Custodian in connection with the issuance of Warrants to be delivered to the redeeming Authorized Participant, and any sales, stamp or stock transfer taxes, or fees), the Custodian will transfer from the Trust's account to such Authorized Participant's account the aggregate Basket Copper Amount corresponding to the Baskets surrendered for redemption and will send written confirmation thereof to the Trustee which will then cancel all Shares so redeemed. The specific copper to be transferred to the redeeming Authorized Participant's account will be selected by the Custodian pursuant to an algorithm that gives priority to the delivery of copper that no longer meets LME requirements (e.g., is of a brand, or held at a location, that is no longer LME approved) or is on Warrant (in the rare instances where some of the Trust's copper may be on Warrant). While the Trust generally will not hold Warrants, but rather warrantable metal that may be placed on Warrant (''off Warrant''), the Sponsor expects that creation and redemption transactions with the Trust will be facilitated via Warrants. Copper represented by Warrants that are delivered by an Authorized Participant upon creation will, through the Trust's settlement process, be taken off Warrant prior to settlement with the Trust. Similarly, the placement of the metal on Warrant is completed following the settlement of the redemption. The costs associated with taking warrantable metal off Warrant will be borne by the Authorized Participant.[28] Within each category, copper is selected for transfer to redeeming Authorized Participants on a last-in-first-out basis.[29] The location of such transfer will be part of the Warrant details.

If the copper transferred to the redeeming Authorized Participant's account meets the requirements of the LME to be placed on Warrant and the Custodian is able to issue Warrants at such time, promptly after a redemption the Custodian will issue to the redeeming Authorized Participant one or more Warrants representing as much of the copper transferred to the Authorized Participant's account in connection with such redemption as may be placed on Warrant in compliance with the LME Rulebook, and without the Custodian having to break apart any specific parcel of copper so transferred pursuant to the algorithm referred to above. Because the LME Rulebook only allows Warrants for 25 tonnes (plus or minus 2% deviations), it is possible that the gross amount of copper transferred to an Authorized Participant's account in connection with a redemption may not be placed on Warrant in full. Any residual amount remaining in a redeeming eligible Authorized Participant's account after the Warrants have been issued, not in excess of 25.5 tonnes (or, together with all other purchases effected by J. Aron from eligible Authorized Participants during a specified period, as disclosed in the Registration Statement, preceding the redemption, a specified number of Baskets) will be purchased for cash from such eligible Authorized Participant by J. Aron, pursuant to procedures described in the Registration Statement at the LME Bid Price that would apply to an LME-traded cash futures contract settling on the same date (or, if there is no such LME-traded contract, at the price agreed to between the redeeming eligible Authorized Participant and J. Aron). All fees due to J. Aron as consideration for its agreement to provide this service will be paid by the Sponsor.

If it is not possible for the Custodian to issue Warrants in connection with a redemption of Shares as described

[26] The Goldman Sachs Group, Inc. and its affiliates (''GS Entities'') have represented to the Sponsor that they maintain policies that are reasonably designed to prevent misuse or improper dissemination of nonpublic information, including a ''need-to-know'' standard that states that confidential information may be shared only with persons who have a need to know the information to perform their duties and to carry out the purpose(s) for which the information was provided. In addition, GS Entities have represented to the Sponsor that they maintain specific policies and procedures that are reasonably designed to protect confidential and commercially sensitive information associated with Metro's business from being shared with GS Entity individuals engaged in commodity sales and trading activities.

[27] Warrants that are registered with the LMEsword are surrendered to the warehouse holding the copper.

[28] The cost for placing warrantable metal on Warrant is nominal. The Authorized Participant is expected to pay $10 per tonne to put the metal on Warrant. In addition, the LME Bid Price as of April 27th, 2012 published on the LME Web site is $8443.00 per tonne (*http://www.lme.com/copper/asp*).

[29] The Sponsor represents that only copper that satisfies all of the requirements to be put on Warrant in compliance with the LME Rulebook, as in effect at the time such copper is delivered to Custodian, can be used to facilitate creations. Authorized Participants desiring to create with Warranted copper will be required to take such Warrants off Warrant prior to delivery to the Custodian. In connection with redemptions, if the copper transferred to the redeeming Authorized Participant's account meets the requirements of the LME to be placed on Warrant, the Custodian will facilitate the issuance of one more Warrants in compliance with the LME Rulebook, subject to the Trust's procedures.

above (for example, because the copper to be delivered does not meet the LME specifications to be placed on Warrant, or because there is a failure in the electronic system used by the LME to process the issuance and transfer of Warrants), the Custodian will deliver to the redeeming Authorized Participant one or more negotiable warehouse receipts representing the copper transferred to the Authorized Participant's account in connection with such redemption. In the normal course of the Trust's operations, it is anticipated that Authorized Participants will receive Warrants (not warehouse receipts) following a redemption transaction. In the event that metal is no longer considered warrantable because, for example, the LME announces that a specific brand is no longer approved to be placed on Warrant the Trust will have operational procedures in place to put such metal on Warrant prior to such an event when possible.[30] In the event that the metal is unable to be placed on Warrant, the Authorized Participant will receive a warehouse receipt instead of a Warrant following a redemption transaction.

Redemptions may be suspended only (i) during any period in which regular trading on NYSE Arca is suspended or restricted or the Exchange is closed (other than scheduled holiday or weekend closings), or (ii) if an emergency exists that makes it reasonably impracticable for the Custodian to deliver Warrants and warehouse receipts.

Termination Events

The Trustee will terminate the Trust Agreement if (1) the Trustee is notified that the Shares are delisted from NYSE Arca and are not approved for listing on another national securities exchange within five business days of their delisting; (2) holders of at least 75% of the outstanding Shares notify the Trustee that they elect to terminate the Trust; (3) 60 days have elapsed since the Trustee notified the Sponsor of the Trustee's election to resign and a successor Trustee has not been appointed and accepted its appointment; (4) the Commission determines that the Trust is an investment company under the Investment Company Act of 1940, as amended,[31] and the Trustee has actual knowledge of that determination; (5) the aggregate market capitalization of the Trust, based on the closing price for the Shares, was less than a specified dollar amount on each of five consecutive trading days and the Trustee receives, within six months from the last of those trading days, notice that the Sponsor has decided to terminate the Trust; (6) the CFTC determines that the Trust is a commodity pool under the Commodity Exchange Act and the Trustee has actual knowledge of that determination; (7) the Trust fails to qualify for treatment, or ceases to be treated, as a grantor trust for United States federal income tax purposes and the Trustee receives notice that the Sponsor has determined that the termination of the Trust is advisable; or (8) if the law governing the Trust limits its maximum duration, upon the expiration of 21 years after the death of the last survivor of all the descendants of Elizabeth II, Queen of England, living on the date of the Trust Agreement.

Additional information regarding the Shares and the operation of the Trust, including termination events, risks, and creation and redemption procedures, are described in the Registration Statement.

Valuation of Copper; Computation of Net Asset Value

According to the Registration Statement, on each business day, as soon as practicable after 4:00 p.m. E.T., the Trustee will value the copper held by the Trust and determine the NAV of the Trust. For purposes of making these calculations, a business day means any day other than a day when NYSE Arca is closed for regular trading.

The Trustee will value the Trust's copper at that day's announced LME Bid Price. If there is no announced LME Bid Price on a business day, the Trustee will be authorized to use the most recently announced LME Bid Price unless the Sponsor determines that such price is inappropriate as a basis for valuation.[32] In addition, if at any time the Sponsor believes the value of the Trust's Copper is not accurately represented by the LME Bid Price of a Warrant, the Sponsor will consider an alternative basis for valuation of the Trust's Copper. In such cases, the Sponsor will select and disclose to the shareholders an alternative basis for evaluation which could be, for example, the price announced on that date by any other internationally recognized exchange where copper contracts are traded (such as the COMEX).[33] Alternatively, the Sponsor may arrange for the replacement of unwarrantable Copper for warrantable Copper at that time, but is under no obligation to do so.

Once the value of the copper has been determined, the Trustee will subtract all accrued fees (other than the fees to be computed by reference to the value of the Trust or its assets), expenses and other liabilities of the Trust from the total value of the copper and all other assets of the Trust. The resulting figure will be the adjusted NAV of the Trust, which will be used to compute all fees (including the Trustee's and the Sponsor's fees) which are calculated based on the value of the Trust's assets.

To determine the NAV of the Trust, the Trustee will subtract from the adjusted NAV of the Trust the amount of accrued fees which are computed based on the value of the Trust's assets. The Trustee also will determine the NAV by dividing the NAV of the Trust by the number of the Shares outstanding at the time the computation is made. Once determined, the NAV will be disseminated via the Sponsor's Web site for the Shares.

Liquidity

The Shares may trade at, above, or below their NAV. The NAV of Shares will fluctuate with changes in the market value of the Trust's assets. The trading prices of Shares will fluctuate in accordance with changes in their NAVs as well as market supply and demand. The amount of the discount or premium in the trading price relative to the NAV per Share may be influenced by non-concurrent trading hours between the major copper markets and the Exchange. While the Shares will trade on the Exchange until 8:00 p.m. E.T., liquidity in the market for copper may be reduced after the close of the major world copper markets, including the LME and the COMEX. As a result, during this time, trading spreads, and the resulting premium or discount, on Shares may widen.

Availability of Information Regarding Copper Prices

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a commodity, such as copper, over the Consolidated Tape. However, there will be disseminated over the Consolidated Tape the quotation and last sale price for the Shares, as is the case for all equity securities traded on the Exchange

[30] In the example noted, the LME generally provides a grace period following an announcement that a brand is no longer eligible to be placed on Warrant.

[31] 15 U.S.C. 80a–1.

[32] The Exchange, pursuant to NYSE Arca Equities Rule 8.201(e)(2)(iv), has discretion to halt trading in the Shares if the LME Bid Price is not determined or available for an extended time period based on extraordinary circumstances or market conditions.

[33] In the event the Sponsor uses an alternative basis for valuation on other than a temporary basis, the Exchange will file with the Commission a proposed rule change pursuant to Rule 19b–4 under the Exchange Act, and such alternative basis will not be implemented until such proposed rule change is approved or operative.

(including exchange-traded funds). In addition, there is a considerable amount of copper price and copper market information available on public Web sites and through professional and subscription services.

Investors may obtain almost on a 24-hour basis copper pricing information based on the spot price of copper from various financial information service providers, such as Reuters and Bloomberg, as well as other sources. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of copper and last sale prices of copper futures, as well as information about news and developments in the copper market.[34] Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on copper prices directly from market participants. Complete real-time data for copper futures and options prices traded on the LME and COMEX are available by subscription from Reuters and Bloomberg. In addition, LME publishes LME official price information on its Web site with a one day delay. The current day's LME official prices (such as the LME Bid Price used to calculate NAV) are available from major market data vendors for a fee. The COMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. The LME official price information is also published on *Basemetals.com* and *Metal-Page.com* with a one day delay. There are a variety of other public Web sites providing information on copper, ranging from those specializing in precious metals to sites maintained by major newspapers, such as The Wall Street Journal.

Market prices for the Shares will be available from a variety of sources including brokerage firms, information Web sites and other information service providers. The NAV will be published by the Sponsor on each business day after 4:00 p.m. E.T. and will be posted on the Trust's Web site. The Exchange will provide on its Web site (*www.nyx.com*) a link to the Trust's Web site. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Shares from the previous day.

Prior to commencement of trading in the Shares on the Exchange, the Exchange will obtain a representation from the issuer that the NAV per Share will be calculated daily and will be made available to all market participants at the same time.

The intraday indicative value (''IIV'') per Share for the Shares, updated at least every 15 seconds, as calculated by the Exchange or a third party financial data provider, will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session on the Exchange (9:30 a.m. to 4:00 p.m., E.T.).[35] The three-month LME copper contract, which has live ticking prices, will serve as the IIV price of copper. The IIV will be calculated by multiplying the indicative spot price of copper by the quantity of copper backing each Share as of the last calculation date.

In addition, the Web site for the Trust will contain the following information, on a per Share basis, for the Trust: (a) the NAV as of the close of the prior business day and the mid-point of the bid-ask price[36] at the close of trading in relation to such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The Trust's Web site will disclose the list of copper lot holdings, updated on a daily basis. The Web site for the Trust will also provide the following information: the Basket Copper Amount, the Trust's prospectus, and the two most recent reports to stockholders. Finally, the Trust's Web site will also provide the last sale price of the Shares as traded in the U.S. market.

Criteria for Initial and Continued Listing

The Trust and the Shares, as applicable, will be subject to the criteria in Rule 8.201(e) for initial and continued listing of the Shares.

A minimum of 100,000 Shares will be required to be outstanding at the start of trading. The minimum number of shares required to be outstanding is comparable to requirements that have been applied to previously listed shares of the streetTRACKS Gold Trust, the iShares Gold Trust, the iShares Silver Trust and exchange-traded funds. The Exchange believes that the anticipated minimum number of Shares outstanding at the start of trading is sufficient to provide adequate market liquidity.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in Shares of the Trust subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which conditions in the underlying copper market have caused disruptions and/or lack of trading, (2) the extent to which the LME official price is no longer available or (3) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule.[37]

The Exchange represents that the Exchange may halt trading during the day in which an interruption to the dissemination of the IIV occurs. If the interruption to the dissemination of the IIV persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Surveillance

The Exchange intends to utilize appropriate surveillance procedures applicable to derivative products

[34] Copper futures trading occurs 24 hours a day each business day in the OTC electronic market.

[35] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs published via the Consolidated Tape Association (''CTA'') or other data feeds.

[36] The bid-ask price of the Trust is determined using the mid-point of highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

[37] *See* NYSE Arca Equities Rule 7.12.

(including Commodity-Based Trust Shares) to monitor trading in the Shares. The Exchange represents that these procedures will be adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. All trading in the Shares will be subject to applicable surveillance procedures.

NYSE Arca Equities Rule 8.201 sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. Pursuant to NYSE Arca Equities Rule 8.201(g), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in the underlying copper, related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Equities Rule 6.3 requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares).

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons.[38] A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. Also, pursuant to NYSE Arca Equities Rule 8.201(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying copper, copper futures contracts, options on copper futures, or any other copper derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members of the ISG.[39] CME Group, Inc., which includes COMEX, is an ISG member. In addition, the Exchange has entered into a comprehensive surveillance sharing agreement with the LME that applies with respect to trading in copper and copper derivatives.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Baskets (including noting that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity of physical copper trading during the Core and Late Trading Sessions after the close of the major world copper markets; and (6) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Shares directly from the Trust (by delivery of the Creation Deposit) will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical copper, that the Commission has no jurisdiction over the trading of copper as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of copper futures contracts and options on copper futures contracts.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[40] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.201. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Investors may obtain copper pricing information based on the spot price of copper from various financial information service providers. Complete real-time data for copper futures and options prices traded on the LME and COMEX are available by subscription from Reuters and Bloomberg, as well as other sources. In addition, LME publishes the LME official price information on its Web site with a one day delay. The COMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. The LME official prices are also published on Basemetals.com and Metal-Page.com with a one day

[38] *See* NYSE Arca Equities Rule 1.1(f) which defines associated person as a person who is a partner, officer, director, member of a limited liability company, trustee of a business trust, employee of an ETP Holder or any person directly or indirectly controlling, controlled by or under common control with an ETP Holder.

[39] A list of ISG members is available at *www.isgportal.org*. The Exchange does not have access to information regarding copper-related OTC transactions in spot, forwards, options or other derivatives. In addition, the Exchange does not have a comprehensive surveillance sharing agreement with SHFE and MCX.

[40] 15 U.S.C. 78f(b)(5).

delay. The Trust's Web site will provide ongoing pricing information for copper spot prices and the Shares. Market prices for the Shares will be available from a variety of sources including brokerage firms, information Web sites and other information service providers. The NAV will be published by the Sponsor on each business day after 4:00 p.m. E.T. and will be posted on the Trust's Web site. The IIV per Share for the Shares, updated at least every 15 seconds, as calculated by the Exchange or a third party financial data provider, will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session on the Exchange. In addition, the Exchange will make available over the Consolidated Tape last sale and quotation information, trading volume, closing prices and NAV for the Shares from the previous day.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that a large amount of information is publicly available regarding the Trust and the Shares, thereby promoting market transparency. Trading in Shares of the Trust will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of Commodity-Based Trust Shares that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2012–66 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–2012–66. 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–2012–66, and should be submitted on or before July 18, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–15730 Filed 6–26–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67234; File No. SR–ISE–2012–26]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Withdrawal of Proposed Rule Change To List and Trade Option Contracts Overlying 10 Shares of a Security

June 21, 2012.

On April 9, 2012, the International Securities Exchange, LLC (''ISE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade option contracts overlying 10 shares of a security. Notice of the proposed rule change was published in the **Federal Register** on April 24, 2012.[3] The Commission received five comment letters on the proposed rule change.[4] On

[41] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66827 (April 18, 2012), 77 FR 24547.

[4] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Christopher Nagy, Managing Director Order Routing & Market Data Strategy, TD Ameritrade, dated April 30, 2012; Manisha Kimmel, Executive Director, Financial Information Forum, dated April 30, 2012; Edward T. Tilly, President

Continued

June 1, 2012, the Commission extended the time period for Commission action to July 23, 2012.[5] On June 11, 2012, ISE withdrew the proposed rule change (SR–ISE–2012–26).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–15637 Filed 6–26–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67233; File No. SR–NYSEArca–2012–26]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Withdrawal of Proposed Rule Change To List and Trade Option Contracts Overlying 10 Shares of a Security (''Mini-Options Contracts'') and Implement Rule Text Necessary To Distinguish Mini-Options Contracts From Option Contracts Overlying 100 Shares of a Security (''Standard Contracts'')

June 21, 2012.

On March 23, 2012, NYSE Arca, Inc. (''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade Mini-Options Contracts and implement rule text necessary to distinguish Mini-Options Contracts from Standard Contracts. Notice of the proposed rule change was published in the **Federal Register** on April 9, 2012.[3] The Commission received six comment letters on the proposed rule change.[4] On May 21, 2012, the Commission extended the time period for Commission action to July 8, 2012.[5] On June 11, 2012, NYSE Arca withdrew the proposed rule change (SR–NYSEArca–2012–26).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–15636 Filed 6–26–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67231; File No. SR–CBOE–2012–057]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Increase the Class Quoting Limit for Options on Facebook

June 21, 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 June 15, 2012, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend the Class Quoting Limit (''CQL'') for options on Facebook. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary 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 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

A CQL is the maximum number of Trading Permit Holders (''TPHs'') that may quote electronically in a given product.[3] CBOE Rule 8.3A, Interpretation .01 states that the CQL for products trading on the Exchange's Hybrid Trading System (''Hybrid'') is 50.[4] However, the President of the Exchange may increase the CQL for an existing or new product if he determines that it would be appropriate.[5] Such an increase can be accomplished by submitting to the Commission a rule filing pursuant to Section 19b(3)(A) of the Act and announcing the increase to TPHs via Information Circular.[6] The Exchange has previously increased the CQLs for other products to 60 via rule filing.[7]

Since the Exchange recently began electronically trading options on Facebook, trading volume and TPH interest in quoting on that product has increased rapidly. As such, CBOE's President has determined that it would be appropriate to increase the CQL for Facebook from 50 to 60. The Exchange has prepared an Information Circular to inform TPHs of this change, and hereby submits this proposed rule filing to effect such change. The Exchange has the system capacity to manage the proposed increase.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations

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and Chief Operating Officer, Chicago Board Options Exchange, Incorporated, dated April 30, 2012; Joan C. Conley, Senior Vice President & Corporate Secretary, The NASDAQ OMX Group, Inc., dated April 30, 2012; and Jennifer Green Setzenfand, Chairman of the Board and James Toes, President and CEO, Security Traders Association, dated June 8, 2012.

[5] *See* Securities Exchange Act Release No. 67097 (June 1, 2012), 77 FR 33794 (June 7, 2012).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66725 (April 3, 2012), 77 FR 21120.

[4] *See* email from Danon Robinson, Toro Trading, LLC, dated April 5, 2012; letters to Elizabeth M. Murphy, Secretary, Commission, from Christopher Nagy, Managing Director Order Routing & Market Data Strategy, TD Ameritrade, dated April 30, 2012; Manisha Kimmel, Executive Director, Financial Information Forum, dated April 30, 2012; Edward T. Tilly, President and Chief Operating Officer, Chicago Board Options Exchange, Incorporated, dated April 30, 2012; Joan C. Conley, Senior Vice President & Corporate Secretary, The NASDAQ OMX Group, Inc., dated April 30, 2012; and Jennifer Green Setzenfand, Chairman of the Board and James Toes, President and CEO, Security Traders Association, dated June 8, 2012.

[5] *See* Securities Exchange Act Release No. 67034 (May 21, 2012), 77 FR 31418 (May 25, 2012).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* CBOE Rule 8.3A.

[4] *See* CBOE Rule 8.3A, Interpretation .01(a).

[5] *See* CBOE Rule 8.3A, Interpretation .01(b).

[6] *See* CBOE Rule 8.3A, Interpretation .01(c).

[7] *See* Securities Exchange Act Release No. 55664 (April 24, 2007), 72 FR 23867 (May 1, 2007) (SR–CBOE–2007–36), which increased the CQLs for Apple Inc. and Research In Motion to 60.

thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. Increasing the CQL for Facebook allows more Market-Makers to quote in that product, which provides greater volume and more trading activity for all market participants, thereby perfecting the mechanism for a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that waiving the 30-day operative delay will enable the additional Market-Makers to start quoting on Facebook immediately, thereby providing greater volume and more trading activity in that product. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow CBOE to respond without delay to what it has identified to be current market demand for increased quoting capacity in options overlying Facebook stock and thereby will help accommodate current market interest. Further, the Exchange has represented that it has the systems capacity to accommodate the additional quotation activity. Accordingly, the Commission designates the proposed rule change to be operative upon filing with the Commission.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–057 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–057. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–057 and should be submitted on or before July 18, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–15634 Filed 6–26–12; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION

Office of Privacy, Records, and Disclosure; Privacy Act of 1974, as Amended

AGENCY: Special Inspector General for Afghanistan Reconstruction.

ACTION: Notice of Proposed Privacy Act Systems of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Special Inspector General for Afghanistan Reconstruction (SIGAR) gives notice of the establishment of seven Privacy Act systems of records with exemptions.

DATES: Comments must be received no later than July 27, 2012. The new system

of records will be effective August 27, 2012 unless SIGAR receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to Hugo Teufel, Acting General Counsel, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202–3934. Comments will be made available for inspection up written request. SIGAR will make such comments available for public inspection in the Office of Privacy, Records, and Disclosure, 9th Floor, 1550 Crystal Drive, Arlington, VA 22202, on official business days between the hours of 9 a.m. and 5 p.m. Eastern time. You can make an appointment to inspect comments by telephoning (703) 545–6000. All comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Kate Gastner, Public Information Manager, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202–3934, (703) 545–5993.

SUPPLEMENTARY INFORMATION: On January 28, 2008, the President signed into law the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), which created the Special Inspector General for Afghanistan Reconstruction (SIGAR). SIGAR is responsible for coordinating and conducting audits and investigations to promote efficiency and effectiveness of reconstruction programs, and to detect and prevent waste, fraud, and abuse of taxpayers' dollars. Under 5 U.S.C. § 301, heads of Executive or military departments may prescribe regulations governing the conduct of its employees and the custody, use, and preservation of the department's records, papers, and property. To facilitate SIGAR's audits, investigations, and other operations, it plans to create the following systems of records:

SIGAR–04 Freedom of Information Act and Privacy Act Records;
SIGAR–05 Audit Records;
SIGAR–06 Correspondence Records;
SIGAR–07 Hotline Records;
SIGAR–08 Investigation Records;
SIGAR–09 Legal Records;
SIGAR–10 Legislative Inquiries and Correspondence.

In the notice of proposed rulemaking, amending 5 CFR Part 9301, which is published separately in the **Federal Register**, SIGAR is proposing to exempt records maintained in several systems from certain of the Privacy Act's requirements pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

The Report of the a new system of records, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000.

Sections 552a(e)(4) and (11) of title 5, United States Code, provide that an agency public a notice of the establishment or revision of a record system which affords the public a 30-day period in which to submit comments. To meet this requirement, descriptions of the three new systems of records are published in their entirety below.

Dated: June 19, 2012.

Steven J. Trent,

Acting Inspector General.

SIGAR–04

SYSTEM NAME:

Freedom of Information Act and Privacy Act Records.

SYSTEM LOCATION:

Office of the Special Inspector General for Afghanistan Reconstruction (SIGAR), 1550 Crystal Drive, 9th Floor, Arlington, VA 22202–4135.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals requesting copies of records from SIGAR under the provisions of the FOIA and the PA; individuals who submit FOIA and PA requests, or FOIA/PA administrative appeals; individuals whose requests and/or records have been referred to the SIGAR by other agencies; and in some instances includes attorneys representing individuals submitting such requests and appeals, or individuals who are the subjects of such requests and appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, and telephone number; description or identification of records requested, request control number, furnished and/or denied; FOIA and PA division employee name assigned responsibility for processing request; dates of request and actions; interim and final actions taken on request; persons or offices assigned actions on requests; copy of records requested, furnished and/or denied; fee data, including payment delinquencies; final determinations of appeals; name/title of officials responsible for denial of records; and case notes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. No. 110–181, Section 1229, National Defense Authorization Act for Fiscal Year 2008; 5 U.S.C. Appendix 3, Inspector General Act of 1978, as amended; 5 U.S.C. 552, Public information; agency rules, opinions, orders, records and proceedings; and the Privacy Act of 1974, 5 U.S.C. 552a, as amended.

PURPOSE(S):

The processing of access requests and administrative appeals under the FOIA, access and amendment requests and administrative appeals under the Privacy Act; for the purpose of participating in litigation regarding agency action on such requests and appeals; and for the purpose of assisting the SIGAR in carrying out any other responsibilities under the FOIA and the Privacy Act. Also used to produce statistical reports; and as a data source for management information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside SIGAR as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To another federal agency when consultation or referral is required to process requests.

2. For the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing SIGAR in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; and (3) witness, potential witness, or their representatives and assistants, and any other person who possess information pertaining to the matter when it is necessary to obtain information or testimony relevant to the matter.

3. To the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and

necessary for, the proceeding; (2) is compatible with the purpose for which SIGAR collected the records; and (3) the proceedings involve: SIGAR, current or former contractors of SIGAR, or other United States Government agencies and their components, or a current or former employee of SIGAR, current or former contractors of SIGAR, or other United States Government agencies and their components, who are acting in an official capacity, or in any individual capacity where SIGAR or other United States Government agency has agreed to represent the employee.

4. To SIGAR contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to SIGAR officers and employees under the Privacy Act.

5. When (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) SIGAR has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by SIGAR or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with SIGAR's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored as paper and/or electronic storage media.

RETRIEVABILITY:

Records are retrieved by name of requester and/or assigned request control number.

SAFEGUARDS:

Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established SIGAR computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records in this system will be retained in accordance with a schedule to be submitted for approval by the National Archives and Records Administration (NARA) and other government-wide records schedules, as applicable.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Special Inspector General for Afghanistan Reconstruction, Director, Privacy, Records, and Disclosure, 2530 Crystal Drive, Arlington, VA 22202–3934.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Office of the Special Inspector General for Afghanistan Reconstruction, Headquarters, Director, Privacy, Records, and Disclosure, 2530 Crystal Drive, Arlington, VA 22202.

The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of the Special Inspector General for Afghanistan Reconstruction, Headquarters, Privacy Act Officer, 2530 Crystal Drive, Arlington, VA 22202.

The request should include the requestor's complete name, time period for which records are sought, and the office location(s) where the requestor believes the records are located.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Individuals requesting copies of records and individuals responsible for processing and/or making determination on requests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

During the course of a FOIA/PA action, exempt materials from other systems of records may become part of the case records in this system of records. To the extent that copies of exempt records from those other systems of records are entered into these FOIA/PA case records, SIGAR hereby claims the same exemptions for the records as claimed in the original primary systems of records which they are a part.

Some records contained within this system of records are exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5),(e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). See 5 CFR part 9301. For additional information contact the System manager.

SIGAR–05

SYSTEM NAME:

Audit Records.

SYSTEM LOCATION:

Headquarters, Special Inspector General for Afghanistan Reconstruction (SIGAR), 9th Floor, 1550 Crystal Drive, Arlington, VA 22202–4135, and in SIGAR field offices in Afghanistan.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Auditors, certain administrative support staff, contractors of SIGAR, and certain subjects and/or witnesses referenced in SIGAR's audit activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of the auditor, support staff, contractors; audit reports; and working papers, which may include copies of correspondence, evidence, subpoenas, other documents collected and/or generated by the Audit Directorate during the course of official duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. No. 110–181, Sections 1229 and 842, National Defense Authorization Act for Fiscal Year 2008; 5 U.S.C. App. 3, Inspector General Act of 1978, as amended; and 5 U.S.C. § 301, Government Organization and Employees.

PURPOSE(S):

This system is maintained in order to act as a management information system for SIGAR audit projects and personnel and to assist in the accurate and timely conduct of audits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside SIGAR as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To appropriate Federal, foreign, state, local, Tribal or other public authorities or self-regulatory organizations responsible for investigating or prosecuting the violation of, or for enforcing or

implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a potential violation of civil or criminal law or regulation.

2. To the appropriate local, state, foreign or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

3. For the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing SIGAR in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; and (3) witness, potential witness, or their representatives and assistants, and any other person who possess information pertaining to the matter when it is necessary to obtain information or testimony relevant to the matter.

4. To the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which SIGAR collected the records; and (3) the proceedings involve: (a) SIGAR, current or former contractors of SIGAR, or other United States Government agencies and their components, or (b) A current or former employee of SIGAR, current or former contractors of SIGAR, or other United States Government agencies and their components, who is acting in an official capacity or in any individual capacity where SIGAR or another United States Government agency has agreed to represent the employee.

5. To the appropriate foreign, state, local, tribal, or other public authority or self-regulatory organization for the purpose of (a) consulting as to the propriety of access to or amendment or correction of information obtained from that authority or organization, or (b) verifying the identity of an individual who has requested access to or amendment or correction of records.

6. To SIGAR contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to SIGAR officers and employees under the Privacy Act.

7. To appropriate agencies, entities, and persons when (1) SIGAR suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) SIGAR has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by SIGAR or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with SIGAR's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

8. To any source, either private or governmental, to the extent necessary to elicit information relevant to a SIGAR audit or investigation.

9. In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger.

10. To persons engaged in conducting and reviewing internal and external peer reviews of SIGAR to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization or to ensure auditing standards applicable to Government audits by the Comptroller General of the United States are applied and followed.

11. When (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the SIGAR has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by SIGAR or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with SIGAR's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored on paper media and/or electronic storage media.

RETRIEVABILITY:

By name of the auditor, support staff, contractors, or subject of the audit.

SAFEGUARDS:

All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established SIGAR computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records in this system will be retained in accordance with a schedule to be submitted for approval by the National Archives and Records Administration (NARA) and other government-wide records schedules, as applicable.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Audits, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202–3934.

NOTIFICATION PROCEDURE:

A request by an individual to determine if a system of records contains information about themselves should be directed to Director, Privacy, Records and Disclosure, Office of the Special Inspector General for Afghanistan Reconstruction, Headquarters, Privacy Act Officer, 2530 Crystal Drive, Arlington, VA 22202–3934.

The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Director, Privacy, Records and Disclosure, Office of the Special Inspector General for Afghanistan Reconstruction, Headquarters, Privacy Act Officer, 2530 Crystal Drive, Arlington, VA 22202–3934.

The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

CONTESTING RECORD PROCEDURES:

In accordance with the SIGAR regulation implementing the Privacy Act, a request by an individual to determine if a system of records contains information about him/her should be directed to Director, Privacy, Records and Disclosure, Office of the Special Inspector General for Afghanistan Reconstruction, Headquarters, Privacy Act Officer, 2530 Crystal Drive, Arlington, VA 22202–3934. The request should include the requestor's complete name, time period for which records are sought, and the office locations(s) where the requestor believes the records are located.

RECORD ACCESS PROCEDURES:

Same as notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above. Records are generally kept at locations where the work is performed. In accordance with the SIGAR Privacy Act regulation, proper identification is required before a request is processed.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 522a(j)(2) and (k)(2).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). See 5 CFR part 9301. For additional information contact the System manager.

SIGAR–06

SYSTEM NAME:

Correspondence Records.

SYSTEM LOCATION:

Headquarters, Special Inspector General for Afghanistan Reconstruction, 9th Floor, 1550 Crystal Drive, Arlington, VA 22202–4135.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Correspondents; and persons and entities upon whose behalf correspondence was initiated.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence received by SIGAR and responses generated thereto; and records used to respond to incoming correspondence, including information included in SIGAR's other systems of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. No. 110–181, Sections 1229 and 842, National Defense Authorization Act for Fiscal Year 2008; 5 U.S.C. App. 3, Inspector General Act of 1978, as amended; and 5 U.S.C. § 301, Government Organization and Employees.

PURPOSE(S):

This system consists of correspondence received by SIGAR from individuals and their representatives; Federal, foreign, state, local, tribal or other public authorities; entities subject to oversight by SIGAR; oversight committees; and others who conduct business with SIGAR and the responses thereto. It serves as a record of incoming correspondence and the steps taken to respond.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside SIGAR as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To appropriate Federal, foreign, state, local, tribal or other public authorities or self-regulatory organizations responsible for investigating or prosecuting violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

2. To the appropriate local, state, foreign, or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

3. For the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing SIGAR in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; and (3) witness, potential witness, or their representatives and assistants, and any other person who possess information pertaining to the matter when it is necessary to obtain information or testimony relevant to the matter.

4. To the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which SIGAR collected the records; and (3) the proceedings involve: (a) SIGAR, current or former contractors of SIGAR, or other United States Government agencies and their components, or (b) A current or former employee of SIGAR, current or former contractors of SIGAR, or other United States Government agencies and their components, who is acting in an official capacity or in any individual capacity where SIGAR or another United States Government agency has agreed to represent the employee.

5. To the appropriate foreign, state, local, Tribal, or other public authority or self-regulatory organization for the purpose of (a) consulting as to the propriety of access to or amendment or correction of information obtained from that authority or organization, or (b) verifying the identity of an individual who has requested access to or amendment or correction of records;

6. To SIGAR contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to SIGAR officers and employees under the Privacy Act.

7. To appropriate agencies, entities, and persons when (1) SIGAR suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) SIGAR has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by SIGAR or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with SIGAR's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

8. To foreign governments or international organizations in accordance with treaties, international conventions, or agreements.

9. In situations involving an imminent danger of death or physical injury, a record from this system of records may be disclosed as a routine use to an individual or individuals who are in danger.

10. To any source, either private or governmental, to the extent necessary to elicit information relevant to a SIGAR audit or investigation.

11. To persons engaged in conducting and reviewing internal and external peer reviews of SIGAR to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization or to ensure auditing standards applicable to government audits by the Comptroller General of the United States are applied and followed.

12. When (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the SIGAR has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by SIGAR or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with SIGAR's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored on paper media and/or electronic storage media.

RETRIEVABILITY:

By name, date, or subject matter.

SAFEGUARDS:

All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established SIGAR computer center procedures (personnel screening and physical security), and they are password protected. Classified information is maintained in locked General Services Administration-approved Class 6 security containers. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records in this system will be retained in accordance with a schedule to be submitted for approval by the National Archives and Records Administration (NARA) and other government-wide records schedules, as applicable.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Management and Support, Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202–3934.

NOTIFICATION PROCEDURE:

A request by an individual to determine if a system of records contains information about themselves should be directed to the Director, Privacy, Records and Disclosure, Special Inspector General for Afghanistan Reconstruction, Headquarters, 2530 Crystal Drive, Arlington, VA 22202–3934.

The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Privacy, Records and Disclosure, Special Inspector General for Afghanistan Reconstruction, Headquarters, 2530 Crystal Drive, Arlington, VA 22202–3934.

The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

CONTESTING RECORD PROCEDURES:

Same as notification procedures above.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). See 5 CFR part 9301. For additional information contact the system manager.

SIGAR–07

SYSTEM NAME:

SIGAR Hotline Records.

SYSTEM LOCATION:

Headquarters, Special Inspector General for Afghanistan Reconstruction, 9th Floor, 1550 Crystal Drive, Arlington, VA 22202–4135, and in SIGAR field offices in Afghanistan.

CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:

Individuals who are the subjects of inquiries concerning allegations of complaints, who have pertinent knowledge about the inquiry, including SIGAR employees, and individuals authorized to furnish information; confidential informants, complainants, SIGAR Hotline personnel, and other individuals involved in these inquiries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of individual or entity involved, case number, report title; records resulting from the referral of, and inquiry into, Hotline complaints, such as the date of the complaint; the Hotline control number; the name of the complainant; the actual allegations; referral documents to SIGAR components requesting investigation into SIGAR Hotline complaints; referral documents from SIGAR components transmitting the SIGAR Hotline Completion Report, which normally contains the name of the examining official(s) assigned to the case; background information regarding the investigation itself, such as the scope of the investigation, relevant facts discovered, information received from witnesses, and specific source documents reviewed; the investigator's findings, conclusions, and recommendations; and the disposition of the case; and internal SIGAR Hotline forms documenting review and analysis of SIGAR Hotline Completion Reports received from SIGAR components.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. No. 110–181, Sections 1229 and 842, National Defense Authorization Act for Fiscal Year 2008; 5 U.S.C. App. 3, Inspector General Act of 1978, as amended; and 5 U.S.C. § 301, Government Organization and Employees.

PURPOSE(S):

These responsibilities include conducting and supervising investigations relating to programs and operations relating to the expenditure of appropriated funds and funds otherwise made available for the reconstruction of Afghanistan, promoting the economy, efficiency, and effectiveness in the administration of such programs and operations, and preventing and detecting fraud, waste and abuse in such programs and operations. The records are used in investigations of individuals and entities suspected of having committed illegal or unethical acts. The records are also used in any resulting criminal prosecutions, civil proceedings, or administrative actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside SIGAR as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To appropriate Federal, foreign, state, local, tribal or other public authorities or self-regulatory organizations responsible for investigating or prosecuting violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

2. To the appropriate local, state, foreign or federal agency when records alone or in conjunction with other information, indicates a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

3. For the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing SIGAR in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witnesses, potential witnesses, or their representatives and assistants, and any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

4. To the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which SIGAR collected the records; and (3) the proceedings involve: (a) SIGAR, current or former contractors of SIGAR, or other United States Government agencies and their components, or (b) A current or former employee of SIGAR, current or former contractors of SIGAR, or other United States Government agencies and their components, who is acting in an official capacity or in any individual capacity where SIGAR or another United States Government agency has agreed to represent the employee.

5. To a federal agency, in response to its written request, to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. SIGAR must deem such disclosure to be compatible with the purpose for which it collected the information.

6. To foreign governments or international organizations in accordance with treaties, international conventions, or agreements.

7. To SIGAR contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to SIGAR officers and employees under the Privacy Act.

8. When (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) SIGAR has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by SIGAR or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with SIGAR's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

9. In situations involving an imminent danger of death or physical injury, a record from this system of records may be disclosed as a routine use to an individual or individuals who are in danger.

10. To any source, either private or governmental, to the extent necessary to elicit information relevant to a SIGAR audit or investigation.

11. To persons engaged in conducting and reviewing internal and external peer reviews of SIGAR to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization or to ensure auditing standards applicable to government audits by the Comptroller General of the United States are applied and followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored on paper media and/or electronic storage media.

RETRIEVABILITY:

Records may be retrieved by name of individual or entity involved, case number, report title, or subject matter.

SAFEGUARDS:

All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established SIGAR computer center procedures (personnel screening and physical security), and they are password protected.

RETENTION AND DISPOSAL:

Records in this system will be retained in accordance with a schedule to be submitted for approval by the National Archives and Records Administration (NARA) and other government-wide records schedules, as applicable.

SYSTEM MANAGER(S) AND ADDRESS:

Director, SIGAR Hotline, Office of the Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202–3934.

NOTIFICATION PROCEDURES:

A request by an individual to determine if a system of records contains information about themselves should be directed to Director, Privacy, Records and Disclosure, Office of the Special Inspector General for Afghanistan Reconstruction, Headquarters, Privacy Act Officer, 2530

Crystal Drive, Arlington, VA 22202–3934.

The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Director, Privacy, Records and Disclosure, Office of the Special Inspector General for Afghanistan Reconstruction, Headquarters, Privacy Act Officer, 2530 Crystal Drive, Arlington, VA 22202–3934.

The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Subject individuals; individuals and organizations that have pertinent knowledge about a subject individual or corporate entity; those authorized by an individual to furnish information; confidential informants; and Federal Bureau of Investigation (FBI) and other Federal, foreign, state, and local entities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). See 5 CFR part 9301. For additional information contact the System manager.

SIGAR–08

SYSTEM NAME:

Investigation Records.

SYSTEM LOCATION:

Headquarters, Special Inspector General for Afghanistan Reconstruction (SIGAR), 9th Floor, 1550 Crystal Drive, Arlington, VA 22202 and at SIGAR field offices in Afghanistan.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals filing complaints of criminal, civil, or administrative violations, including fraud, waste or mismanagement; individuals alleged to have been involved in such violations; individuals identified as having been adversely affected by matters investigated by SIGAR; individuals who have been identified as possibly relevant to, or who are contacted as part of, a SIGAR investigation, including: (1) current and former employees of the Departments of Defense and State and the Agency for International Development, other Federal agencies, and federal contractors, grantees, and persons whose associations with current and former employees relate to alleged violations under investigation; and, (2) witnesses, complainants, confidential informants, suspects, defendants, respondents to SIGAR or other subpoenas, or parties who have been identified by SIGAR, other agencies, or members of the general public in connection with authorized SIGAR functions; and SIGAR employees performing investigative functions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of subject(s), case number, title of investigative report, name of complainant, Social Security Number (SSN), and/or names of witnesses, letters, memoranda, and other documents citing complaints of alleged criminal or administrative misconduct.

Investigative files: (1) reports of investigation resulting from allegations of misconduct or violations of law with related exhibits, statements, affidavits, records or other pertinent documents (including those obtained from other sources, such as Federal, state, local, or foreign investigative or law enforcement agencies and other government agencies) obtained during investigations; (2) transcripts and documentation concerning requests and approval for consensual (telephone and non-telephone) monitoring; (3) reports from or to other law enforcement bodies; (4) prior criminal or noncriminal records of individuals as they relate to investigations; (5) subpoenas issued pursuant to SIGAR investigations, documents or other evidence produced to SIGAR, and legal opinions, advice, and other legal documents prepared by SIGAR or other agency counsel; (6) reports of actions taken by management personnel regarding misconduct allegations and reports of legal actions, including actions resulting from violations of statutes referred to the United States Department of Justice for prosecution; (7) records involving the disposition of investigations and resulting agency actions (e.g., criminal prosecutions, civil proceedings, administrative action); and (8) other documentation and materials created during the course of or arising out of SIGAR investigations; and records containing the name and/or other personal identifying information for SIGAR employees; names and other personal identifying information for individuals who are investigated or involved as complainants, witnesses, informants, or otherwise in SIGAR investigations; and details relating to investigations and complaints, such as the date of the complaint; case number(s); name of the complainant; matters alleged; referral documents; research materials; and other documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. No. 110–181, Sections 1229 and 842, National Defense Authorization Act for Fiscal Year 2008; 5 U.S.C. App. 3, Inspector General Act of 1978, as amended; 5 U.S.C. § 301, Government Organization and Employees; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

These records are used for conducting and supervising investigations relating to programs and operations regarding the expenditure of appropriated funds and funds otherwise made available for the reconstruction of Afghanistan, promoting the economy, efficiency, and effectiveness in the administration of such programs and operations, and preventing and detecting fraud, waste and abuse. The records are used in investigations of individuals and entities suspected of having committed illegal or unethical acts. The records are also used in any resulting criminal prosecutions, civil proceedings, or administrative actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside SIGAR as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To appropriate Federal, foreign, state, local, tribal or other public authorities or self-regulatory organizations responsible for investigating or prosecuting violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

2. For the purpose of an investigation, settlement of claims, or the preparation

and conduct of litigation to (1) persons representing SIGAR in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; and (3) witness, potential witness, or their representatives and assistants, and any other person who possess information pertaining to the matter when it is necessary to obtain information or testimony relevant to the matter.

3. To the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which SIGAR collected the records; and (3) the proceedings involve: (a) SIGAR, current or former contractors of SIGAR, or other United States Government agencies and their components, or (b) A current or former employee of SIGAR, current or former contractors of SIGAR, or other United States Government agencies and their components, who is acting in an official capacity or in any individual capacity where SIGAR or another United States Government agency has agreed to represent the employee.

4. To a federal agency, in response to its written request, to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. SIGAR must deem such disclosure to be compatible with the purpose for which the Office collected the information.

5. To foreign governments or international organizations in accordance with treaties, international conventions, or agreements.

6. To SIGAR contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to SIGAR officers and employees under the Privacy Act.

7. To persons engaged in conducting and reviewing internal and external peer reviews of SIGAR to ensure adequate internal safeguards and management procedures exist within any office that had received law enforcement authorization or to ensure auditing standards applicable to government audits by the Comptroller General of the United States are applied and followed.

8. When (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) SIGAR has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by SIGAR or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with SIGAR's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored on paper media and/or electronic storage media.

RETRIEVABILITY:

Records are retrieved by name of subject(s), case number, title of investigative report, name of complainant, Social Security Number (SSN), and/or names of witnesses.

SAFEGUARDS:

All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established SIGAR computer center procedures (personnel screening and physical security), and they are password protected. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records in this system will be retained in accordance with a schedule to be submitted for approval by the National Archives and Records Administration (NARA) and other government-wide records schedules, as applicable.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigations, 2530 Crystal Drive, Arlington, VA 22202–3934.

NOTIFICATION PROCEDURES:

A request by an individual to determine if a system of records contains information about themselves should be directed to the Director, Privacy, Records and Disclosure, Office of the Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202–3934. The request should include the requestor's complete name, time period for which records are sought, and the office location(s) where the requestor believes the records are located.

RECORD ACCESS PROCEDURES:

A request by an individual to determine if a system of records contains information about themselves should be directed to the Director, Privacy, Records and Disclosure, Office of the Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202–3934. The request should include the requestor's complete name, time period for which records are sought, and the office location(s) where the requestor believes the records are located.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Subject individuals; individuals and organizations that have pertinent knowledge about the subject; those authorized by the individual to furnish information; confidential informants; the Department of Justice; Federal Bureau of Investigation (FBI); other Federal, state, and local agencies; and foreign government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). See 5 CFR part 9301. For additional information contact the System manager.

SIGAR–09

SYSTEM NAME:

SIGAR Legal Records.

SYSTEM LOCATION:

Records are maintained at Headquarters, Special Inspector General for Afghanistan Reconstruction (SIGAR), 1550 Crystal Drive, 9th Floor, Arlington, VA 22202–4135.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons identified in files maintained by the Office of General Counsel, which includes attorneys, including: Litigants and other claimants against SIGAR and its contractors asserting matters including, personal injury, property damage or infringement, contract violation and harms resulting from employer-employee relationships; persons who are the subjects of claims by SIGAR, such as persons who may have violated criminal laws, agency regulations and contracts with SIGAR and persons against whom SIGAR considered asserting such claims; SIGAR's contractors and potential contractors; SIGAR employees, subject to garnishment or assignments; and SIGAR employees and contractors who use Alternate Dispute Resolution (ADR).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records concerning legal matters include, (1) litigation and all other claims against, and by, SIGAR and its contractors, which have been assigned to the Office of General Counsel; (2) SIGAR contracts; and (3) records pertaining to ADR. Litigation and claim records may, among others, include correspondence, pleadings such as complaints, answers counterclaims and motions; depositions, court orders and briefs. Records in this system may include documents such as accident reports, inspection reports, investigation reports, audit reports, personnel files, contracts, consultant agreements, reports pertaining to criminal matters of interest to SIGAR, Personnel Security Review Board documents, medical records, photographs, telephone records, correspondence, memoranda and other related documents. Records may contain names, addresses, social security numbers and other personally identifiable information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. No. 110–181, Sections 1229 and 842, National Defense Authorization Act for Fiscal Year 2008; 5 U.S.C. App. 3, Inspector General Act of 1978, as amended; and 5 U.S.C. 301, Government Organization and Employees.

PURPOSE:

To assist SIGAR attorneys in providing legal advice to the agency on a wide variety of legal issues; to collect the information of any individual who is, or will be, in litigation with the agency, as well as the attorneys representing the plaintiff(s) and defendant(s) response to claims of employees, former employees, or other individuals; to assist in the settlement of claims against the government; and to represent SIGAR in litigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. To appropriate Federal, foreign, state, local, tribal or other public authorities or self-regulatory organizations responsible for investigating or prosecuting violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

2. For the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to: (1) A person representing SIGAR in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) a witness, potential witness, or their representatives and assistants, and any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

3. To the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which SIGAR collected the records; and (3) the proceedings involve: (a) SIGAR, current or former contractors of SIGAR, or other United States Government agencies and their components, or (b) A current or former employee of SIGAR, current or former contractors of SIGAR, or other United States Government agencies and their components, who is acting in an official capacity or in any individual capacity where SIGAR or another United States Government agency has agreed to represent the employee.

4. To a federal, foreign, state, tribal, or local agency to obtain information relevant to a SIGAR decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit. SIGAR must deem such disclosure to be compatible with the purpose for which SIGAR collected the information.

5. To facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. SIGAR must deem such disclosure to be compatible with the purpose for which SIGAR collected the information.

6. To foreign governments or international organizations in accordance with treaties, international conventions, or agreements.

7. To SIGAR contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to SIGAR officers and employees under the Privacy Act.

8. When (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) SIGAR has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by SIGAR or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with SIGAR's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored as paper records and/or electronic media.

RETRIEVABILITY:

Records are retrieved by name, case name, claim name, or assigned identifying number.

SAFEGUARDS:

All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established SIGAR computer center procedures (personnel screening and physical security), and they are password protected.

RETENTION AND DISPOSAL:

Records in this system will be retained in accordance with a schedule to be submitted for approval by the National Archives and Records Administration (NARA) and other government-wide records schedules, as applicable.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Office of General Counsel, Office of the Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202–3934.

NOTIFICATION PROCEDURES:

A request by an individual to determine if a system of records contains information about themselves should be directed to Headquarters, Special Inspector General for Afghanistan Reconstruction (SIGAR), 2530 Crystal Drive, Arlington, VA 22202–3934.

The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Headquarters, Special Inspector General for Afghanistan Reconstruction (SIGAR), 2530 Crystal Drive, Arlington, VA 22202–3934.

The request should include the requester's complete name, time period for which records are sought, and the office location(s) where the requester believes the records are located.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Subject individuals, inspection reports, other agencies, Office of General Counsel attorneys, other agency officers and staff, contractors, investigators, and auditors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). See 5 CFR part 9301. For additional information contact the System manager.

SIGAR–10

SYSTEM NAME:

Legislative Inquiries and Correspondence.

SYSTEM LOCATION:

Headquarters, Special Inspector General for Afghanistan Reconstruction (SIGAR), 2530 Crystal Drive, Arlington, VA 22202–3934 and in SIGAR field offices in Afghanistan.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested assistance from their Congressional Representative(s), and the member of Congress who corresponded with SIGAR.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of constituent, date of letter by a member of Congress on behalf of the constituent; name of member of Congress, materials forwarded by a member of Congress; and SIGAR response.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1229 and 842, National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 110–181; Inspector General Act of 1978, as amended; 5 U.S.C. App. 3; and 5 U.S.C. 301, Government Organization and Employees.

PURPOSE:

Maintained and used by SIGAR to record legislative inquiries on behalf of constituents and legislative inquiries from a member or committee, to ensure proper document control of the response, and to record the agency's responses to such inquiries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside SIGAR as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To another federal agency when consultation or referral is required to process requests.

2. To appropriate Federal, foreign, state, local, tribal or other public authorities or self-regulatory organizations responsible for investigating or prosecuting violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

3. For the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing the agency in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witnesses, potential witnesses, or their representatives and assistants, and any other person who possesses information pertaining to the matter, when it is necessary to obtain information or testimony relevant to the matter.

4. To the tribunals, counsel, other parties, witnesses, and the public (in publicly available pleadings, filings or discussion in open court) when such disclosure: (1) Is relevant to, and necessary for, the proceeding; (2) is compatible with the purpose for which SIGAR collected the records; and (3) the proceedings involve: (a) SIGAR, current or former contractors of SIGAR, or other United States Government agencies and their components, or (b) A current or former employee of SIGAR, current or former contractors of SIGAR, or other United States Government agencies and their components, who is acting in an official capacity or in any individual capacity where SIGAR or another United States Government agency has agreed to represent the employee.

6. To agency contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to agency officers and employees under the Privacy Act.

7. When (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) SIGAR has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security integrity if this system or other systems or programs (whether maintained by SIGAR or another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with SIGAR's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

Records are retrieved by name of constituent, other person of interest, or name of member of Congress.

SAFEGUARDS:

All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. Paper records are maintained in locked cabinets and desks. Electronic records are controlled through established SIGAR computer center procedures (personnel screening and physical security), and they are password protected. Classified information is maintained in locked General Services Administration-approved Class 6 security containers. Access is limited to those whose official duties require access to the records.

RETENTION AND DISPOSAL:

Records in this system will be retained in accordance with a schedule to be submitted for approval by the National Archives and Records Administration (NARA) and other government-wide records schedules, as applicable.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Public Affairs, Office of the Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202–3934.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Director, Privacy, Records and Disclosure, Office of the Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202–3934.

The request should include the requestor's complete name, time period for which records are sought, and the office location(s) where the requestor believes the records are located.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Director, Privacy, Records and Disclosure, Office of the Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202–3934.

The request should include the requestor's complete name, time period for which records are sought, and the office location(s) where the requestor believes the records are located.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above.

RECORD SOURCE CATEGORIES:

Subject individual, member of Congress, and the author of the agency response.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). See 5 CFR part 9301. For additional information contact the system manager.

[FR Doc. 2012–15459 Filed 6–26–12; 8:45 am]

BILLING CODE 3710–L9–P

DEPARTMENT OF STATE

[Public Notice 7936]

Culturally Significant Objects Imported for Exhibition Determinations: ''Drawing Surrealism''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Drawing Surrealism'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Los Angeles County Museum of Art, Los Angeles, CA, from on or about October 21, 2012, until on or about January 6, 2013; The Morgan Library & Museum, New York, NY, from on or about January 25, 2013, until on or about May 12, 2013; and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: June 20, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–15738 Filed 6–26–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7935]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Human Beast: German Expressionism at The San Diego Museum of Art''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''The Human Beast: German Expressionism at The San Diego Museum of Art'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The San Diego Museum of Art, San Diego, CA, from on or about July 21, 2012, until on or about November 11, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of

State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: June 20, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–15743 Filed 6–26–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 150/5345–53D, Airport Lighting Equipment Certification Program; Proposed Update and Opportunity to Comment

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

ACTION: Notice of update of AC150/5345–53C to AC150/5345–53D.

SUMMARY: The FAA proposes to replace AC150/5345–53C with AC150/5345–53D to clarify the criteria under the Airport Lighting Equipment Certification Program (ALECP) for acceptance of an organization as a third party certification body (third party certifier) and how manufacturers may get equipment qualified under the program. The Secretary of Transportation is providing notice in the **Federal Register** of, and an opportunity for public comment on AC150/5345–53D, Airport Lighting Equipment Certification Program.

DATES: Comments must be received on or before August 13, 2012.

ADDRESSES: Comments may be delivered or mailed to the FAA, Airport Engineering Division, AAS–100, Room 621, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Richard L. Smith, Electronic Engineer, Airport Engineering Division, AAS–100, Room 621, FAA, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–9529.

SUPPLEMENTARY INFORMATION: Advisory Circular 150/5345–53D, Airport Lighting Equipment Certification Program, draft document is available on the Internet. The direct Internet address is: *http://www.faa.gov/airports/resources/draft_advisory_circulars.*

Letter to Manufacturers under the Airport Lighting Equipment Certification Program June 12, 2012:

Federal Aviation Administration (FAA) Draft Advisory Circular (AC) 150/5345–53D, *Airport Lighting Equipment Certification Program,* is being circulated to interested industry associations to obtain comments and recommendations of actions to be taken. Please review this draft and submit comments as appropriate. Additionally, comments should be submitted on a separate document and not embedded in the draft AC. Additionally, please provide justification for all comments regarding oppositions with recommended modifications. The Office of Airport Safety and Standards may revise the final document as a result of comments received after further review.

This AC describes the Airport Lighting Equipment Certification Program (ALECP). It provides information on how an organization can get Federal Aviation Administration acceptance as a third party certification body (third party certifier) and how manufacturers may get equipment qualified under the program.

Comments received prior to July 31, 2012, will be considered for inclusion in the advisory circular. Concurrence with the enclosure is requested. POC is *Richard.L.Smith@faa.gov,* phone 202–267–9529.

The document may be obtained in Adobe Acrobat PDF format from the FAA Airports Internet site at *http://www.faa.gov/airports/resources/draft_advisory_circulars/.* Changes to this document are color-coded in bold blue for your convenience.

Issued in Washington, DC, on June 13, 2012.

Michael J. O'Donnell,

Director, Office of Airport Safety and Standards.

[FR Doc. 2012–15737 Filed 6–26–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Final Environmental Impact Statement (FEIS) for the Taos Regional Airport Layout Plan Improvements, Taos, NM

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

ACTION: Notice of Availability of the Final Environmental Impact Statement.

Location: The Taos Regional Airport (SKX) is located in north Taos County, New Mexico, approximately seven miles northwest of the Town of Taos.

SUMMARY: The FAA is issuing this Notice to advise the public that it has prepared a Final Environmental Impact Statement (FEIS) for a proposed new runway and associated facilities and improvements at the Taos Regional Airport, Taos, New Mexico. The FEIS reflects the Section 106 consultations between the FAA, the Taos Pueblo, Town of Taos, National Park Service, Advisory Council on Historic Preservation, New Mexico State Historic Preservation Officer (SHPO), and the New Mexico Department of Transportation regarding adverse effects on the Taos Pueblo World Heritage Site and other traditional cultural properties within the National Register Eligible Historic District associated with the Taos Pueblo. The FEIS also includes floodplain impact evaluations.

The FAA is seeking comments on those sections of the FEIS that have been updated and/or contain information that has become available since the release of the DEIS. Please see the **SUPPLEMENTARY INFORMATION** section below for more information.

The FAA is providing a thirty day (30) day FEIS review period. The FEIS review period begins on the date of the publication of this Notice of Availability in the **Federal Register**, and will close on July 30, 2012. The FAA must receive written comments on these subsections postmarked no later than July 30, 2012. Comments received after that date may not be considered by the FAA.

All comments on the FEIS are to be submitted to Mr. Dean McMath of the FAA, at the address shown in the section below entitled, ''*For Further Information or to Submit Comments*''.

SUPPLEMENTARY INFORMATION: The FAA, as the lead Federal agency, has prepared the EIS for the proposed new runway and related facilities and improvements at SKX. The Department of Interior National Park Service and the Taos Pueblo are Cooperating Agencies for the preparation of the EIS.

The airport development action proposed by the Town of Taos (the Airport Sponsor) is the construction of a new runway at SKX that would be 8,600 feet long and 100 feet wide. Related facilities and improvements proposed by the Airport Sponsor include grading and drainage improvements, taxiways, new airfield lighting, communication equipment, and navigational aids associated with the new runway; shortening the existing Runway 4/22 by 420 feet; construction of a new airport access road; and, extension of an on-airport access road.

The FAA published a Draft Environmental Impact Statement (DEIS) in October, 2006. The DEIS was prepared pursuant to the *National Environmental Policy Act of 1969* (NEPA). The DEIS comparatively assessed and disclosed the potential future impacts of the No-Action

Alternative and three proposed action alternatives designated as Alternative 2–C, Alternative 2–D, and Alternative 3.

Since the publication of the DEIS, the FAA has addressed comments received on the DEIS; addressed comments on the Preliminary FEIS provided by Cooperating Agencies; conducted additional technical analyses; conducted the Section 106 consultation process; and prepared the FEIS. The Section 106 consultation process resulted in the execution of a Memorandum of Agreement (MOA) in February 2012.

Because the DEIS is more than three years old, the FAA evaluated the DEIS to determine whether the consideration of alternatives, affected environment, environmental impacts, and mitigation measures in the DEIS remains applicable, accurate, and valid in accordance with FAA Order 1050.1E, paragraph 514a and 5050.4B, Section 1401.b.3. The FAA found that substantial changes in these factors have not occurred and that a complete revision or supplement to the DEIS was not warranted. However, FAA's review of current information did note that some social and environmental changes have occurred since the DEIS was published in 2006. The FAA evaluated the new information and determined that the changes did not affect the range of alternatives considered or the detailed analysis of alternatives conducted in this FEIS. However, to document and disclose the social and environmental changes that have occurred, the FAA prepared a technical memorandum that presents the new information and discusses any potential impacts related to the changed social and environmental conditions. The technical memorandum is contained in the FEIS.

The FAA is making available the FEIS it prepared addressing a proposed new runway and associated facilities and improvements at the Taos Regional Airport. The FEIS discloses:

- The purpose and need for the proposed project;
- Reasonable alternatives analyzed and the FAA's preferred alternative;
- Potential environmental impacts and consequences associated with those alternatives;
- FAA's responses to comments it received on the DEIS; and
- How FAA has complied with various resource laws, regulations and executive orders, including the *National Environmental Policy Act,* Section 106 of the *National Historic Preservation Act,* Executive Order (EO) 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'', and EO 11988, ''Floodplain Management.''

Public Review and Comment: The FEIS is available for review during normal business hours at the following locations:

- FAA Southwest Regional Office, 2601 Meacham Boulevard, Fort Worth, Texas 76137,
- Taos Regional Airport, Highway 64 West, 1 Airport Road, Taos, New Mexico 87571,
- Taos Town Hall, 400 Camino de la Placita, Taos, New Mexico 87571, and
- Taos Public Library, 402 Camino de la Placita, Taos, New Mexico 87571.

Comments should be as specific as possible and address the analysis of potential environmental impacts, the adequacy of the proposed action, or the merits of alternatives and the mitigation being considered. Reviewers should organize their participation so that it is meaningful and makes the agency aware of the viewer's interests and concerns using quotations and other specific references to the text of the FEIS and related documents. This is intended to ensure that substantive comments and concerns are made available to the FAA in a timely manner so that the FAA has an opportunity to address them in its Record of Decision (ROD).

Comments can only be accepted with the full name and address of the individual commenting. Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask the FAA in your comment to withhold from public review your personal identifying information, the FAA cannot guarantee that it will be able to do so.

After review and consideration of the comments received on the FEIS, and sometime after the 30-day comment period on the FEIS has ended, the FAA will issue its ROD.

FOR FURTHER INFORMATION CONTACT OR TO SUBMIT COMMENTS: Dean McMath, ASW–613, Regional Environmental Programs Manager, Federal Aviation Administration, Southwest Regional Office, Fort Worth, Texas 76193, telephone (817) 222–5617.

Issued in Fort Worth, Texas, on June 19, 2012.

Kelvin L. Solco,

Manager, Airports Division.

[FR Doc. 2012–15735 Filed 6–26–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Request for Public Comment, Raleigh County Memorial Airport, Beckley, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The Federal Aviation Administration is requesting public comment on the proposed release of 549.63 acres of land currently owned by the Raleigh County Commission, Sponsor for the Raleigh County Memorial Airport, Beckley, West Virginia. The parcel is located off the northwest end of the airport and descends in to ''Fat Creek Gorge'' to a depth in excess of 600ft below the airport elevation and has no aeronautical benefit. The land is dormant, no infrastructure exists and land has no practical use. Due to terrain, no future development opportunities exist for the airport. Once released, the land will be sold and placed in a Conservation Easement, with restriction of no future development. Proposed buyer would be placing the area of request in a conservation easement for wildlife enhancement, with no adverse impact to the airport. Land will remain as compatible use to the airport. Land will be sold as surface rights only, no conveyance of mineral rights. The airport land being released is not needed for airport development as shown on the Airport Layout Plan. Fair Market Value has been determined based upon an appraisal of the Property.

DATES: Comments must be received on or before July 27, 2012.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Connie Boley-Lilly, Program Specialist, Federal Aviation Administration, Beckley Airport Field Office, 176 Airport Circle, Room 101, Beaver, West Virginia 25813.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Tom Cochran, Airport Manager of the Raleigh County Memorial Airport at the following address: Thomas Cochran, Airport Manager, Raleigh County Memorial Airport, 176 Airport Circle, Room 105, Beaver, West Virginia 25813.

FOR FURTHER INFORMATION CONTACT: Connie Boley-Lilly, Program Specialist, Beckley Airport Field Office, (304) 252–6216 ext. 125, Fax (304) 253–8028. Email: *Connie.Boley-Lilly@FAA.GOV.*

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public

comment on the request to release property at the Raleigh County Memorial Airport, Beckley, WV. Under the provisions of AIR 21 (49 U.S.C. 47108(h)(2)).

The Raleigh County Memorial Airport is proposing the release of approximately 549.6 acres of a 'surface rights only' release to be sold and land then placed in a Conservation Easement with restriction of no future development. The release and sale of this property will allow the Sponsor to take advantage of un-useable land and use the proceeds for that sale, for the future development of the airport.

Issued in Beckley, West Virginia on May 3, 2012.

Matthew P. DiGiulian,

Manager, Beckley Airport Field Office, Eastern Region.

[FR Doc. 2012–15616 Filed 6–26–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Availability of the Draft Environmental Impact Statement: Los Angeles County, CA

AGENCY: Federal Highway Administration (FHWA).

ACTION: Notice of Availability of the Draft Environmental Impact Statement.

SUMMARY: The FHWA, on behalf of the California Department of Transportation (Caltrans), announces the availability of the Draft Environmental Impact Statement for a proposed highway project in Los Angeles County, California.

DATES: Public hearings for the Draft Environmental Impact Statement will be held at the dates and locations provided below:

- Tuesday, August 7, 2012 (6:00 p.m. to 9:00 p.m.)—Progress Park, 15500 Downey Ave., Paramount, California 90723
- Wednesday, August 8, 2012 (6:00 p.m. to 9:00 p.m.)—Silverado Park Community Center, 1545 W. 31st St., Long Beach, CA 90810
- Thursday, August 9, 2012 (4:00 p.m. to 8:00 p.m.)—Rosewood Park, 5600 Harbor St., Commerce, CA 90040

ADDRESSES: The Draft Environmental Impact Statement is available for review at the following locations:

- California Department of Transportation (Caltrans) District 7 Office, 100 South Main Street, Los Angeles, CA 90012 on weekdays from 9 a.m. to 3 p.m.
- Metro—Dorothy Peyton Grey Transportation Library, One Gateway Plaza, Los Angeles, CA 90012, Monday–Thursday 9 a.m. to 4 p.m., or Friday by appointment.
- Gateway Cities Council of Governments, 16401 Paramount Blvd., Paramount, CA 90723 on weekdays from 9 a.m. to 4pm.
- City of Commerce Public Library—Bristow Park Branch—1466 S. McDonnell Ave., Commerce, CA 90040
- County of Los Angeles Public Library—Hollydale Library—12000 S. Garfield Ave., South Gate, CA 90280
- County of Los Angeles Public Library—East Rancho Dominguez Library—4205 E. Compton Blvd., Compton CA 90221
- Long Beach Public Library—Main Library—101 Pacific Ave., Long Beach, CA 90822
- Long Beach Public Library Bret Harte Library—1595 W. Willow St., Long Beach, CA 90810

The Draft Environmental Impact Statement is also available at *http://www.dot.ca.gov/dist07/resources/envdocs/docs/710corridor/*

FOR FURTHER INFORMATION CONTACT: Ronald Kosinski, Deputy District Director, Environmental Planning, Caltrans, District 7, 100 South Main Street, Los Angeles, California, 90012, (213) 897–0703.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the FHWA assigned and Caltrans assumed environmental responsibilities for this project pursuant to 23 U.S.C. 327. Caltrans as the delegated National Environmental Policy Act (NEPA) agency has prepared a Draft EIS on a proposal for a highway improvement project on Interstate 710 in Los Angeles County, California. The Interstate 710 Corridor Project proposes to improve Interstate 710 (I–710) in Los Angeles County. The I–710 Corridor Project proposes to widen existing I–710 from Ocean Boulevard in the City of Long Beach to State Route 60 (SR–60) in the City of Los Angeles, a distance of approximately 18 miles. The proposed project also includes improvements to the interchanges of I–710 with I–405, SR–91, and I–5, as well as the I–710 interchanges with local arterial streets throughout the project limits.

The alternatives evaluated in the Draft Environmental Impact Statement are four Build Alternatives and a No Build Alternative. Alternative 5A proposes to widen the I–710 mainline from six or eight general purpose lanes to ten general purpose lanes. This alternative will modernize the design at the I–405, SR–91 and a portion of the I–5 interchanges, modernize and reconfigure local arterial interchanges throughout the I–710 corridor, modify freeway access at various locations, and shift the I–710 centerline at various locations to reduce right-of-way impacts. In addition to improvements to the I–710 mainline and the interchanges, Alternative 5A also includes TSM/TDM, Transit, and Intelligent Transportation Systems (ITS) improvements; improvements to 42 local arterial intersections within the I–710 Corridor; aesthetic enhancements; and, drainage and water quality improvement design features. Alternative 6A includes all the components of Alternative 5A described above. In addition, this alternative includes a separated four-lane freight corridor from Ocean Boulevard northerly to its terminus near the intermodal rail yards in the city of Commerce, with limited access near I–405 and at SR–91. The freight corridor would be built to Caltrans highway design standards and would be restricted to the exclusive use of heavy-duty trucks (5+ axles). Alternative 6B includes all the components of Alternative 6A as described above, but would restrict the use of the freight corridor to zero-emission trucks rather than conventional trucks. Alternative 6C includes all the components of Alternative 6B as described above, but would toll trucks using the freight corridor. Alternative 1 (No Build) would maintain the current configuration and capacity of the existing I–710 freeway. The Notice of Intent was published in the **Federal Register** on August 20, 2008. Anticipated federal approvals include: Modified Access Report to the Interstate System, Air Quality Conformity, Section 7 consultation for Threatened and Endangered Species, and a Section 404 permit.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 21, 2012.

Matthew Schmitz,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. 2012–15641 Filed 6–26–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28043]

Hours of Service (HOS) of Drivers; Revision of Exemption; American Pyrotechnics Association (APA)

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

ACTION: Notice of revised regulatory exemption.

SUMMARY: The FMCSA announces a revision to the list of member motor carriers of the American Pyrotechnics Association (APA) that were granted an exemption from FMCSA's prohibition on driving commercial motor vehicles (CMVs) after the 14th hour after the driver comes on duty, during the periods of June 28–July 8, inclusive, in 2011 and 2012. The exemption covered renewal of 53 APA-member motor carriers and added 9 new APA-member carriers. It allowed drivers of specified carriers who operate CMVs in conjunction with staging fireworks shows celebrating Independence Day to exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour period. These drivers continue to be subject to the 11-hour driving time limit and the 60- and 70-hour weekly on-duty limits. This revision, requested by APA, removes 14 APA-member carriers that have either gone out of business or no longer require the exemption.

DATES: This revision to the exemption is effective during the period of June 28, 2012, through July 8, 2012, inclusive.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Hydock, FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Telephone: 202–366–4325. Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the HOS requirements in 49 CFR 395.3(a)(2) for up to 2 years if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption'' (49 U.S.C. 31315(b)(1)).

The initial APA application for waiver or exemption relief from the 14-hour rule was submitted in 2004; a copy of the application is in the docket. That application fully describes the nature of the pyrotechnic operations of the CMV drivers employed by APA-member motor carriers during a typical Independence Day period. The CMV drivers are trained pyrotechnicians and hold commercial driver's licenses with hazardous materials endorsements. They transport fireworks and related equipment by CMV on a very demanding schedule, often to remote locations. After they arrive, the APA drivers are responsible for set-up and staging of the fireworks shows.

In 2011, FMCSA granted an exemption renewal to 53 APA-member motor carriers and added 9 new APA-member carriers (76 FR 37876 and 76 FR 37880, June 28, 2011) for their Independence Day fireworks displays in 2011 and 2012.

APA is currently requesting removal from the 2012 Independence Day exemption of 14 APA-member companies that have either gone out of business or no longer require the exemption. A list of these companies is included as Appendix A and a revised list of the 48 APA-member companies, still covered by the 2012 exemption is included as Appendix B to this notice.

The HOS rules prohibit a property-carrying CMV driver from driving after the 14th hour after coming on duty following 10 consecutive hours off duty (49 CFR 395.3(a)(2)). During the periods June 28–July 8, 2012, inclusive, the companies named in Appendix B, and CMV drivers employed by them, will be exempt from section 395.3(a)(2) if they are operating in conjunction with the staging of fireworks shows celebrating Independence Day.

The exemption permits CMV drivers engaged in these operations to exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour on-duty period. These drivers must continue to obtain 10 consecutive hours off duty prior to the 14-hour period, and observe the 11-hour driving time limit, as well as the 60- and 70-hour on-duty limits. The drivers must comply with all other applicable provisions of the Federal Motor Carrier Safety Regulations (49 CFR 390–399). For a full explanation of the terms and conditions of the exemption, see the **Federal Register** notice published on June 28, 2011 (76 FR 37876–37882).

Issued on: June 21, 2012.

Larry W. Minor,

Associate Administrator for Policy.

APPENDIX A TO THE NOTICE OF REVISED REGULATORY EXEMPTION FOR THE AMERICAN PYROTECHNICS ASSOCIATION (APA)

[Removal of 14 Motor Carriers for a Limited HOS Exemption during the 2012 Independence Day Celebrations]

Motor carrier	Address 1	Address 2	DOT No.
1. Arrowhead Fireworks Co., Inc	3625 Normanna Rd	Duluth, MN 55803	125673
2. Atlas Pyrovision Productions, Inc	136 Old Sharon Rd	Jaffrey, NH 03452	789777
3. Fireworks Productions of Arizona, Ltd.	17034 S 54th Street	Chandler, AZ 85226	948780
4. Ingram Enterprises dba Fireworks over America.	6597 W Independece Drive	Springfield, MO 65802	0268419
5. Island Fireworks Company	N735 825th St	Hager City, WI 54014	414583
6. Jake's Fireworks/Fireworks Spectacular.	2311 A West 4th St	Pittsburg, KS 66762	449599
7. Johnny Rockets Fireworks Display Co.	4410 N. Hamilton	Chicago, IL 60625	1263181
8. Montana Display Inc	9480 Inspiration Drive	Missoula, MT 59808	1030231
9. Rich Brothers Company	700 S Marion Rd	Sioux Falls, SD 57106	001356
10. Wald & Co., Inc	PO Box 319	Greenwood, MO 64034–0319	087079
11. Walt Disney Parks & Resorts, USA Inc.	5700 Maple Road	Lake Buena Vista, FL 32830	148477
12. Winco Fireworks Int. LLC	1992 NW Hwy 50	Lone Jack, MO	259688
13. Victory Fireworks Inc	579 Vincent Lane	Ellsworth, WI 54011	539751
14. Young Explosives Corp	P.O. Box 18653	Rochester, NY	450304

APPENDIX B TO THE NOTICE OF REVISED REGULATORY EXEMPTION FOR THE AMERICAN PYROTECHNICS ASSOCIATION (APA)

[For a Limited HOS Exemption for 48 Motor Carriers during the 2012 Independence Day Celebrations]

Motor carrier	Address 1	Address 2	DOT No.
1. Alonzo Fireworks Display, Inc	12 County Rd 75	Mechanicsville, NY 12118	420639
2. American Fireworks Company	7041 Darrow Road	Hudson, OH 44236	103972
3. AM Pyrotechnics, LLC	2429 East 535th Rd	Buffalo, MO 65622	1034961
4. Arthur Rozzi Pyrotechnics	6607 Red Hawk Ct	Maineville, OH 45039	2008107
5. Atlas Enterprises Inc	6601 Nine Mile Azle Rd	Fort Worth, TX 76135	0116910
6. B.J. Alan Company	555 Martin Luther King, Jr Blvd	Youngstown, OH 44502–1102	262140
7. Cartwright Fireworks, Inc	1608 Keely Road	Franklin, PA 16323	882283
8. Central States Fireworks, Inc	18034 Kincaid Street	Athens, IL 62613	1022659
9. Colonial Fireworks Company	5225 Telegraph Road	Toledo, OH 43612	177274
10. East Coast Pyrotechnics, Inc	4652 Catawba River Rd	Catawba, SC 29704	545033
11. Entertainment Fireworks, Inc	P.O. Box 7160	Olympia, WA 98507–7160	680942
12. Falcon Fireworks	3411 Courthouse Road	Guyton, GA 31312	1037954
13. Fireworks & Stage FX America	P.O. Box 488	Lakeside, CA 92040	908304
14. Fireworks by Grucci, Inc	1 Grucci Lane	Brookhaven, NY 11719	324490
15. Fireworks Extravaganza	58 Maple Lane	Otisville, NY 10963	2064141
16. Fireworks West Internationale	3200 West 910 North	Logan, UT 84321	245423
17. Garden State Fireworks, Inc	383 Carlton Road	Millington, NJ 07946	435878
18. Gateway Fireworks Displays	P.O. Box 39327	St Louis, MO 63139	1325301
19. Global Pyrotechnics Solutions, Inc	10476 Sunset Drive	Dittmer, MO 63023	1183902
20. Great Lakes Fireworks	24805 Marine	Eastpointe, MI 48021	1011216
21. Hamburg Fireworks Display Inc	4300 Logan Lancaster Rd	Lancaster, OH	395079
22. Hi-Tech FX, LLC	1135 Ave. I	Fort Madison, IA 52627	1549055
23. Hollywood Pyrotechnics, Inc	1567 Antler Point	Eagan, MN 55122	1061068
24. J&M Displays, Inc	18064 170th Ave	Yarmouth, IA 52660	377461
25. Kellner's Fireworks Inc	478 Old Rte 8	Harrisville, PA	481553
26. Lantis Productions dba Lantis Fireworks and Lasers.	P.O. Box 491	Draper, UT 84202	195428
27. Legion Fireworks Co., Inc	10 Legion Lane	Wappingers Falls, NY 12590	554391
28. Mad Bomber/Planet Productions	P.O. Box 294	Kingsbury, IN 46345	777176
29. North Central Industries, Inc	1500 E. Washington	Muncie, IN 47305	00165755
30. Precocious Pyrotechnics, Inc	4420–278th Ave NW	Belgrade, MN 56312	435931
31. Pyro Engineering Inc., dba/Bay Fireworks.	110 Route 110, Suite 102	Huntington Station, NY 11746	530262
32. Pyro Shows Inc	701 W. Central Ave	LaFollette, TN 37766	456818
33. Pyro Spectacluars, Inc	3196 N Locust Ave	Rialto, CA 92376	029329
34. Pyro Spectaculars North, Inc	5301 Lang Avenue	McClellan, CA 95652	1671438
35. Pyrotechnic Display, Inc	8450 W. St. Francis Rd	Frankfort, IL 60423	1929883
36. Pyrotecnico	302 Wilson Rd	New Castle, PA 16105	526749
37. Pyrotecnico of Louisiana, LLC	60 West Ct	Mandeville, LA 70471	548303
38. Rainbow Fireworks, Inc	76 Plum Ave	Inman, KS 67546	1139643
39. RES Specialty Pyrotechnics	21595 286th St	Belle Plaine, MN 56011	523981
40. Rozzi's Famous Fireworks, Inc	11605 North Lebanon Rd	Loveland, OH 45140	0483686
41. Skyworks, Ltd	13513 W. Carrier Rd	Carrier, OK 73727	1421047
42. Spielbauer Fireworks Co, Inc	220 Roselawn Blvd	Green Bay, WI 54301	046479
43. Stonebraker-Rocky Mountain Fireworks Co.	5650 Lowell Blvd, Unit E	Denver, CO 80221	0029845
44. Vermont Fireworks Co., Inc./ Northstar Fireworks Co., Inc.	2235 Vermont Route 14 South	East Montpelier, VT 05651	310632
45. Western Display Fireworks, Ltd	10946 S. New Era Rd	Canby, OR 97013	498941
46. Western Enterprises, Inc	P.O. Box 160	Carrier, OK 73727	203517
47. Wolverine Fireworks Display, Inc	205 W Seidlers	Kawkawlin, MI	376857
48. Zambelli Fireworks MFG, Co., Inc	P.O. Box 1463	New Castle, PA 16103	033167

[FR Doc. 2012–15745 Filed 6–26–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0105]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt seven individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety

maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective June 27, 2012. The exemptions expire on June 27, 2014.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Background

On May 11, 2012, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (77 FR 27852). That notice listed seven applicants' case histories. The seven individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the seven applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing requirement red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The seven exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including enucleation of the eye, amblyopia, congenital eye disease and retinal detachment. In most cases, their eye conditions were not recently developed. Six of the applicants were either born with their vision impairments or have had them since childhood. The individual that sustained a vision condition as an adult has had it for a period of 10 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these seven drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 10 to 43 years. In the past 3 years, none of the drivers were involved in crashes, and none of the drivers were convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the May 11, 2012 notice (77 FR 27852).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345,

March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the seven applicants, none of the drivers were involved in crashes and none of the drivers were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the seven applicants listed in the notice of May 11, 2012 (77 FR 27852).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the seven individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the seven exemption applications, FMCSA exempts Charles S. Amyx, Jr. (LA), Giovanni B. Cerino, Jr. (FL), Randall L. Mathis (AL), Shane N. Maul (IN), Michael E. McAfee (KY), Dennis D. Pimley (CA) and James E. Sikkink (IL) from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: June 20, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–15629 Filed 6–26–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0160]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 10 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye.

DATES: Comments must be received on or before July 27, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2012–0160 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 10 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Kerry L. Baxter

Mr. Baxter, age 59, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/30, and in his left eye, 20/200. Following an examination in 2011, his optometrist noted, ''I certify that, at this time, Mr. Kerry Baxter has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Baxter reported that he has driven tractor-trailer combinations for 40 years, accumulating 9 million miles. He holds a Class A Commercial Driver's License (CDL) from Utah. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Tyrane Harper

Mr. Harper, 51, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, ''Mr. Harper has sufficient vision to drive a commercial motor vehicle based on the exemption he is trying to obtain.'' Mr. Harper reported that he has driven straight trucks for 16 years, accumulating 240,000 miles. He holds a Class D operator's license from Alabama. His driving record for the last 3 years shows one crash, which he was not cited for, and no convictions for moving violations in a CMV.

Edward C. Little

Mr. Little, 58, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20, and in his left eye, count finger vision. Following an examination in 2012, his optometrist noted, ''In my medical opinion, Mr. Little's vision is sufficient to operate a commercial vehicle.'' Mr. Little reported that he has driven straight trucks for 6 weeks, accumulating 7,500 miles, and tractor-trailer combinations for 5 years, accumulating 323,000 miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John P. Loichinger

Mr. Loichinger, 36, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/150, and in his left eye, 20/20. Following an examination in 2012, his optometrist noted, ''His vision is stable and sufficient to perform the driving tasks required to operate a commercial vehicle.'' Mr. Loichinger reported that he has driven straight trucks for 15 years, accumulating 30,000 miles. He holds a chauffer's license from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jeffrey Macysyn

Mr. Macysyn, 35, has complete loss of vision in his right eye due to a traumatic injury sustained in childhood. The best corrected visual acuity in in his left eye is 20/15. Following an examination in 2011, his ophthalmologist noted, ''In my opinion, Mr. Macysyn has sufficient peripheral vision using his left eye only to operate a commercial vehicle.'' Mr. Macysyn reported that he has driven straight trucks for 5 years, accumulating 80,000 miles. He holds a Class D operator's license from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Peter G. Packard

Mr. Packard, 57, has had cystoidal macular edema in his right eye since 2011. The best corrected visual acuity in his right eye is 20/150, and in his left eye, 20/20. Following an examination in 2011, his ophthalmologist noted, ''In my opinion Mr. Packard likely has sufficient visual function required to operate a commercial vehicle.'' Mr. Packard reported that he has driven tractor-trailer combinations for 32 years, accumulating 3.2 million miles. He holds a Class A CDL from New Hampshire. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Raef O. Parmelee

Mr. Parmelee, 42, has complete loss of vision in his left eye due to a traumatic injury sustained in 1996. The best corrected visual acuity in his right eye

is 20/15. Following an examination in 2011, his optometrist noted, ''I do find that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Parmelee reported that he has driven straight trucks for 25 years, accumulating 390,000 miles. He holds a Class C operator's license from Oregon. His driving record for the last 3 years shows one crash, which he was not cited for, and no convictions for moving violations in a CMV.

Ronald H. Sieg

Mr. Sieg, 41, has loss of vision in his right eye due to trauma sustained in childhood. The best corrected visual acuity in his right eye is light perception only, and in his left eye, 20/20. Following an examination in 2011, his ophthalmologist noted, ''Therefore, in my professional opinion Mr. Sieg has the ability to perform the driving tasks required to operate a commercial vehicle.'' Mr. Sieg reported that he has driven straight trucks for 19 years, accumulating 316,198 miles, and tractor-trailer combinations for 19 years, accumulating 32,186 miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ted L. Smeltzer

Mr. Smeltzer, 59, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2012, his optometrist noted, ''I certify that this patient has sufficient vision to operate a commercial vehicle.'' Mr. Smeltzer reported that he has driven straight trucks for 10 years, accumulating 100,000 miles, and tractor-trailer combinations for 10 years, accumulating 100,000 miles. He holds a Class A CDL from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gregory S. Smith

Mr. Smith, 38, has complete loss of vision in his right eye since birth. The best corrected visual acuity in his right eye is light perception only, and in his left eye, 20/20. Following an examination in 2012, his optometrist noted, ''I feel that Mr. Smith has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Smith reported that he has driven straight trucks for 5 years, accumulating 120,000 miles. He holds a Class D operator's license from Arkansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business July 27, 2012. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: June 20, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–15631 Filed 6–26–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2012–0107]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 23 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective June 27, 2012. The exemptions expire on June 27, 2014.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Background

On May 11, 2012, FMCSA published a notice of receipt of Federal diabetes exemption applications from 23 individuals and requested comments from the public (77 FR 27842). The public comment period closed on June 11, 2012, and no comments were received.

FMCSA has evaluated the eligibility of the 23 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with

Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 23 applicants have had ITDM over a range of 1 to 34 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the May 11, 2012, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comments

FMCSA did not receive any comments in this proceeding.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the 23 exemption applications, FMCSA exempts, Christopher M. Anderson (AR), Matthew R. Bagwell (NY), Gary L. Bradburn (VA), Eric J. Bright (IL), Jeffrey M. Burgess, (MT), Robert Castaneda (CA), Kyle D. Dale. (MO), Frank Glenn (IL), Timothy T. Googleye, (MN), Jose D. Gonzalez (CA), Patrick J. Hempel (TN), Matthew M. Horgan, (MO), Mark C. Lucy (IA), Richard M. McMahon (GA), Kevin N. Mitchell (GA), Christopher J. Parr (IN), Gerald Perkins (CA), Donald L. Philpott (WA), John Randolph (OK), Courtney R. Schiebout, Barry L. Schwab (MI), Charles L. Spencer (NY), and Curtis W. Stanley (NE) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: June 20, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–15632 Filed 6–26–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–6156; FMCSA–2000–7006; FMCSA–2001–9561; FMCSA–2001–10578; FMCSA–2001–11426; FMCSA–2002–11714; FMCSA–2002–13411; FMCSA–2003–16241; FMCSA–2003–16564; FMCSA–2004–17195; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2005–23099; FMCSA–2005–23238; FMCSA–2006–23773; FMCSA–2006–24015; FMCSA–2006–24783; FMCSA–2008–0021]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 45 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective July 20, 2012. Comments must be received on or before July 27, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. FMCSA–1999–6156; FMCSA–2000–7006; FMCSA–2001–9561; FMCSA–2001–10578; FMCSA–2001–11426; FMCSA–2002–11714; FMCSA–2002–13411; FMCSA–2003–16241; FMCSA–2003–16564; FMCSA–2004–17195; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2005–23099; FMCSA–2005–23238; FMCSA–2006–23773; FMCSA–2006–24015; FMCSA–2006–

24783; FMCSA–2008–0021, using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

• *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT:

Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 45 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 45 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Harold J. Bartley, Jr. (KY)
Delmas C. Bergdoll (WV)
Kenneth J. Bernard (LA)
Allen G. Bors (NE)
Brad T. Braegger (UT)
John E. Breslin (NV)
Scott F. Chalfant (DE)
Harvis P. Cosby (MD)
Ronald D. Danberry (MN)
Norman J. Day (FL)
Francisco Espinal (IN)
Daniel R. Franks (OH)
David W. Grooms (IN)
Walter D. Hague, Jr. (VA)
Spencer N. Haugen (ND)
William G. Hix (AR)
Ralph E. Holmes (MD)
Bruce A. Homan (WA)
Timothy B. Hummel (KY)
Frederick C. Ingles (WV)
Larry L. Jarvis (VA)
Michael S. Johannsen (IA)
Charles E. Johnston (MO)
Harry L. Jones (OH)
Mearl C. Kennedy (OH)
Aaron C. Lougher (OR)
William F. Mack (WA)
Patrick E. Martin (WA)
Bennet G. Maruska (MN)
Leland K. McAlhaney (IN)
Bobby G. Minton (NC)
Charles J. Morman (FL)
Larry A. Nienhuis (MI)
Corey L. Paraf (IL)
Ronald M. Price (MD)
John P. Raftis (FL)
Scott D. Russell (WI)
Alton M. Rutherford (FL)
Charles L. Schnell (FL)
Andrew W. Schollett (CO)
Joseph B. Shaw, Jr. (VA)
Wolfgang V. Spekis (MD)
Sandra J. Sperling (WA)
Ryan K. Steelman (OR)
Duane L. Tysseling (IA)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 45 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 54948; 65 FR 159; 65 FR 20245; 66 FR 30502; 66 FR 41654; 66 FR 53826; 66 FR 66966; 67 FR 10471; 67 FR 10475; 67 FR 15662; 67 FR 17102; 67 FR 19798; 67 FR 37907; 67 FR 76439; 68 FR 10298; 68 FR 44837; 68 FR 61857; 68 FR 69434; 68 FR 74699; 68 FR 75715; 69 FR 8260; 69 FR 10503; 69 FR 17263; 69 FR 17267; 69 FR 19611; 69 FR 26206; 69 FR 26921; 69 FR 31447; 70 FR 41811; 70 FR 48797; 70 FR 57353; 70 FR 61493; 70 FR 72689; 70 FR 74102; 71 FR 646; 71 FR 4194; 71 FR 5105; 71 FR 6824; 71 FR 6826; 71 FR 6828; 71 FR 6829; 71 FR 13450; 71 FR 14567; 71 FR 16410; 71 FR 19600; 71 FR 19602; 71 FR 19604; 71 FR 26601; 71 FR 26602; 71 FR 27033; 71 FR 30229; 71 FR 32183; 71 FR 41310; 72 FR 52423; 73 FR 11989; 73 FR 15567; 73 FR 27017; 73 FR 27018; 73 FR 28187; 73 FR 36955; 75 FR 36778; 75 FR 36779). Each

of these 45 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by July 27, 2012.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 45 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: June 15, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–15630 Filed 6–26–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0104]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt eight individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective June 27, 2012. The exemptions expire on June 27, 2014.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Background

On May 11, 2012, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (77 FR 27847). That notice listed eight applicants' case histories. The eight individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the eight applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing requirement red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but

have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The eight exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including loss of vision, amblyopia, retinal detachment, macular scarring and prosthesis. In most cases, their eye conditions were not recently developed. Six of the applicants were either born with their vision impairments or have had them since childhood. The individuals that sustained their vision conditions as adults have had it for a period of 17 to 25 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these eight drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 4 to 26 years. In the past 3 years, none of the drivers were involved in crashes, and none of the drivers were convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the May 11, 2012 notice (77 FR 27847).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the eight applicants, none of the drivers were involved in crashes and none of the drivers were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the eight applicants listed in the notice of May 11, 2012 (77 FR 27847).

We recognize that the vision of an applicant may change and affect his/her

ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the eight individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following:

(1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the eight exemption applications, FMCSA exempts Joseph A. Ellis (NY), Matthew G. Epps (FL), Brian R. Gallagher (TX), Jolene A. Gauger (WI), John F. Lynch (VT), Marcus D. Perkins (LA), Joe Ramirez (CA), and John C. Smith (IL) from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: June 20, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–15758 Filed 6–26–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Decision to Grant Buy America Waiver to Washington Department of Transportation to Purchase Vossloh 101–LV Concrete Rail Ties

AGENCY: Federal Railroad Administration (FRA), United States Department of Transportation (DOT).

ACTION: Notice of decision to grant Buy America waiver.

SUMMARY: FRA is issuing this notice to advise the public that it has granted the Washington Department of Transportation's (WSDOT) waiver request from the FRA Passenger Rail Investment and Improvement Act (PRIIA) Buy America requirement for the use of Vossloh 101–LV concrete ties in the Pacific Northwest Rail Corridor high-speed intercity passenger rail program funded by FRA grants. The waiver also covers three other high-speed intercity passenger rail projects being undertaken on BNSF Railway Company (BNSF) owned infrastructure in California, Texas and Illinois. The Vossloh 101–VL concrete rail ties are made in the United States but contain two components (dowel inserts and SKL–30 tension clamps) that are not manufactured in the United States. FRA has granted the waiver because dowel inserts and SKL–30 tension clamps that meet the BNSF's operational and safety needs are not produced in the United States. This waiver is conditioned on BNSF's good faith efforts to find a domestic source for the components and is time limited to two years after the effective date of this waiver or until Vossloh begins manufacturing the components in the United States, whichever occurs first.

DATES: Written comments on FRA's determination to grant WSDOT's Buy America waiver request should be provided to the FRA on or before July 2, 2012.

ADDRESSES: *Comments:* Comments related to Docket No. FRA–2012–0033 may be submitted by any of the following methods:

(1) *Web Site: http://www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site;

(2) *Fax:* (202) 493–2251;

(3) *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, Room W12–140, Washington, DC 20590–0001; or

(4) *Hand Delivery:* Room W12–140 on the first floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the ''Federal Railroad Administration'' and include docket number FRA–2012–0033. Note that all submissions received, including any personal information therein, will be posted without change or alteration to *http://www.regulations.gov.* For more information, you may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or visit *http://www.regulations.gov.*

Docket: For access to the docket to read comments received, go to *http://www.regulations.gov* at any time, or to the Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Chris Van Nostrand, Attorney-Advisor, FRA Office of Chief Counsel, Mail Stop 10, West Building 3rd Floor, Room W31–208, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone 202–493–6058) or via email at *christopher.vannostrand@dot.gov.*

SUPPLEMENTARY INFORMATION: FRA has granted the waiver pursuant to 49 U.S.C. Section 24405(a)(2)(B). On April 10, 2012, FRA published a Notice in the **Federal Register** advising the public of its receipt of WSDOT's waiver request and seeking comments from all interested parties regarding the availability of suitable domestically manufactured products, any public interest concerns, or the potential decision to grant the Buy America waiver. FRA did not receive any comments in response to the April 10th notice during a fifteen day public comment period. FRA also conducted its own independent evaluation of the availability of domestically manufactured products and did not identify a domestic source. Pursuant to

49 U.S.C. 24405(a)(4), the agency is required to publish in the **Federal Register** a detailed written justification as to why the wavier is needed and to provide the public with an opportunity to comment for a period not to exceed 15 days. For the reasons described in the letter provided in full below, FRA is granting WSDOT's waiver request. Since FRA received no comments about the request during the April 10th fifteen day public comment period, FRA is providing a short comment period pursuant to 49 U.S.C. 24405(a)(4) and this decision to grant the waiver request will become effective three days after this Notice is published in the **Federal Register**.

The waiver decision letter provided in full below applies to the WSDOT projects receiving grant funds under FRA's High-Speed Intercity Passenger Rail (HSIPR) Program, as well as projects receiving HSIPR grant funds advanced by the California Department of Transportation, the Texas Department of Transportation, and the Illinois Department of Transportation.

Mr. David Smelser
Washington State Department of Transportation
310 Maple Park Ave SE
Olympia, WA 98504–7300

Dear Mr. Smelser:

This letter is in response to your March 19, 2012, request that the Washington State Department of Transportation (WSDOT) be granted a waiver from the Federal Railroad Administration's (FRA) Buy America provision, at 49 U.S.C. § 24405(a). Your waiver request contained a justification letter from the BNSF Railway Company (BNSF) which owns the infrastructure WSDOT intends to improve as part of the Pacific Northwest Rail Corridor program funded by an FRA grant. Such a waiver would permit WSDOT to purchase and have installed American-made Vossloh 101–VL concrete rail ties which contain two components that are not manufactured in the United States.

The FRA also received the BNSF justification letter from the California Department of Transportation (Caltrans), the Texas Department of Transportation (TxDOT), the Illinois Department of Transportation (IDOT) (with WSDOT, collectively ''grantees'') all of whom received grant funding under FRA's High-Speed Intercity Passenger Rail (HSIPR) Program. The BNSF justification letter covers the following projects: the Pacific Northwest Rail Corridor Program, the Amtrak Quad Cities to Chicago Service Initiation Project, the Tower 55 At-Grade Improvement Project Section, and the Los Angeles to Fullerton Triple Track—Segment 7 Project.[1]

Section 24405(a) authorizes the Secretary of Transportation to obligate certain grant funds only if the steel, iron, and manufactured goods used in the project are produced in the United States. The Secretary (delegated to the FRA Administrator) may waive the Buy America requirement only if he or she finds that: (A) Applying it would be inconsistent with the public interest; (B) the steel, iron, and goods manufactured in the United States are not produced in sufficient and reasonably available amount or are not of a satisfactory quality; (C) rolling stock or power train equipment cannot be bought or delivered to the United States within a reasonable time; (D) or including domestic material will increase the cost of the overall project by more than 25 percent. 49 U.S.C. § 24405(a)(2)(A)–(D). In its justification letter BNSF asserts that two components of the Vossloh 101–L concrete ties—a dowel insert and SKL–30 tension clamps—are not produced in the United States in sufficient and reasonably available amounts and are not of a satisfactory quality and that therefore a waiver is warranted under 49 U.S.C. § 24405(a)(2)(B).

For the following reasons, I am granting WSDOT's request. According to the justification letter, since it began installing concrete ties in the 1970's, BNSF has worked closely with manufacturers to evaluate and test various concrete tie products and technologies. As described in its justification letter, as concrete tie technology advanced and became a more viable alternative to wooden ties, BNSF intensified its efforts to test all available products in an effort to establish a standard for use across its system. As a result, BNSF selected the Vossloh 101–LV tie as the standard concrete tie for use on BNSF's network in 2008. The Vossloh 101–LV concrete tie was selected as BNSF's standard for the following reasons:

- Vossloh concrete ties meet or exceed the technical standards of the American Railway Engineering and Maintenance-of-Way Association (''AREMA'');
- BNSF's performance testing of the Vossloh concrete tie system demonstrated excellent results across all measured criteria, including longitudinal restraint, maintenance of gage, freedom of motion, thermal expansion and failure rates;
- Vossloh concrete ties feature several unique design elements, such as the lack of a shoulder and a field side angle guide plate that matches the width of the tie, which result in reduced wear, reduced maintenance costs and longer product life; and
- Installation and maintenance of Vossloh concrete ties can be largely automated compared to other concrete tie systems, which improves safety and efficiency while reducing overall maintenance time and cost.

As stated in its justification letter, BNSF has searched for domestically manufactured dowel inserts and SKL–30 clamps that are compatible with the American-made Vossloh 101–LV concrete tie system. In addition, while there are alternative concrete tie systems available in the market, they do not meet BNSF's specific operational and maintenance needs.

Through its justification letter and during conversations with FRA staff, BNSF maintains that the selection of the Vossloh concrete tie system as the standardized concrete tie system used on BNSF infrastructure was based on the criteria above and occurred in 2008 prior to the obligation of FRA grant funding. Additionally, BNSF suggests that installing different products would pose potentially insurmountable technical complications. For example, alternative rail ties if used in the FRA-funded projects would not be consistent with BNSF's existing concrete tie system or corresponding maintenance and installation equipment and procedures employed by BNSF. Requiring BNSF to procure and install such alternative concrete ties would require BSNF to purchase specialized installation and maintenance equipment at a substantial cost, as BNSF's current equipment is designed for the installation and maintenance of the Vossloh tie and would not be compatible with alternative rail ties. As such, while there are other concrete tie systems available, such systems are not compatible with BNSF's existing infrastructure and for that reason are not of satisfactory quality for installation in the FRA-funded projects.

Furthermore, the selection of the Vossloh 101–LV concrete tie system was made on technical, safety, and economic considerations rooted in BNSF's long experience installing and maintaining rail tie systems for use by both freight and intercity passenger trains. The FRA therefore finds that BNSF has made an adequate showing that the manufactured products meeting BNSF's appropriate specifications are not

[1] This decision on WSDOT's Buy America waiver request will also apply to the HSIPR projects advanced by IDOT, TXDOT, and Caltrans on BNSF infrastructure using the Vossloh 101–VL concrete rail tie.

produced in a sufficient and reasonably available amount.

The FRA also solicited public comments on the waiver request for a period of 15 days. The waiver request was made available for public review on FRA's Web site and through a notice published in the **Federal Register**. The **Federal Register** notice requested the public's views on the waiver request and for any information regarding the availability of suitable domestically manufactured products. FRA did not receive any comments on the waiver request or any information regarding the availability of suitable domestically manufactured products.

The WSDOT and BNSF began discussions with FRA concerning the Vossloh concrete tie in late 2011. Since then, WSDOT and BNSF have consulted with FRA's legal and technical staff in determining how FRA's Buy America requirements apply to the Vossloh concrete tie and to other FRA investments on BNSF infrastructure. As part of this consultation, BNSF participated in calls with the U.S. Department of Commerce, National Institute of Standards and Technology, Hollins Manufacturing Extension Program (NIST–MEP), an agency that helps encourage the development of a domestic supply base to support intermodal transportation in the United States, including rail infrastructure. These conversations led to BNSF's commitment to help facilitate conversations between NIST–MEP and Vossloh.

The FRA understands that BNSF is one of the largest users of concrete ties in North America with over 11 million concrete ties currently in track. Consequently, FRA acknowledges that BNSF has a substantial interest in ensuring that the concrete ties installed on its system meet BNSF's specific needs in terms of performance, durability and cost efficiency. However, as demonstrated in the waiver request, BNSF also recognizes that as a ''large supplier of rail infrastructure and construction materials it is uniquely situated to encourage American manufacturing of those products.'' The FRA appreciates that BNSF has committed to working with Vossloh to explore the feasibility of having the foreign components made in the United States and to continue an ongoing dialog with FRA and NIST–MEP. Further, FRA is encouraged to hear that Vossloh has separately begun the process to identify potential suitable locations on which to construct a manufacturing facility for the dowels and SKL–30 tension clamps.

For the foregoing reasons, FRA is granting WSDOT's Buy America waiver request.[2] The waiver is conditioned on BNSF's good faith efforts to facilitate conversations between NIST–MEP, FRA and Vossloh in order to explore the feasibility of having the dowel and SKL–30 tension clamps made in the United States. Pursuant to 49 U.S.C. § 24405(a)(4), FRA will publish a detailed written justification in the **Federal Register** and provide notice of such finding and an opportunity for public comment after which this waiver will become effective. This waiver is granted only because of the specific facts of these projects; any future requests for a waiver regarding this product will not be granted without a specific showing that domestic products for that particular project also are not reasonably available at that time. Additionally, unless otherwise approved by FRA in writing, this waiver is time limited to two years after the effective date of this waiver or until Vossloh begins manufacturing the components in the United States, whichever occurs first.

Sincerely,
Joseph C. Szabo
Administrator

Issued in Washington, DC on June 25, 2012.

Melissa Porter,

Chief Counsel.

[FR Doc. 2012–15865 Filed 6–26–12; 8:45 am]

BILLING CODE 4910–06–P

[2] This waiver applies to the SKL–30 tension clamp and the dowel insert manufactured in Germany and does not apply to any other component of the Vossloh 101–LV concrete rail tie that might be available from both foreign and domestic sources.

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0072]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel PISCES; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 27, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0072. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PISCES is:

INTENDED COMMERCIAL USE OF VESSEL: ''Yacht racing support and coastal photography.''

GEOGRAPHIC REGION: ''Rhode Island, Massachusetts, Connecticut, California.''

The complete application is given in DOT docket MARAD–2012–0072 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the

comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: June 21, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–15723 Filed 6–26–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0071]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ISLANDER; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 27, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0071. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ISLANDER is:

INTENDED COMMERCIAL USE OF VESSEL: ''Overnight luxury pleasure time charters for weeklong or greater charter periods.''

GEOGRAPHIC REGION: ''Florida, Georgia, South Carolina, North Carolina, Maryland, Virginia, Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire and Maine.''

The complete application is given in DOT docket MARAD–2012–0071 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: June 21, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–15711 Filed 6–26–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0007; Notice 1]

Mercedes-Benz USA, LLC, and Daimler AG (DAG), Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Receipt of petition.

SUMMARY: Mercedes-Benz USA, LLC [1] (MBUSA) and its parent company Daimler AG (DAG)(collectively referred to as ''MB'') have determined that certain model year 2011 and 2012 Mercedes-Benz S–Class (221 platform) passenger cars do not fully comply with paragraph S4.4 *TPMS Malfunction* of Federal Motor Vehicle Safety Standard (FMVSS) No. 138, *Tire Pressure Monitoring Systems.* MB has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports* (dated September 30, 2011).

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR Part 556), MB has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of MB's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Vehicles involved: Affected are approximately 4,769 model year 2011 and 2012 Mercedes-Benz S–Class (221 platform) passenger cars that were produced from March 2011 through August 2011.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the

[1] Mercedes-Benz USA, LLC, and Daimler AG are motor vehicle manufacturers and importers. Mercedes-Benz USA, LLC is a limited liability company organized under the laws of Delaware. Daimler AG is organized under the laws of Germany.

subject 4,769 [2] Mercedes-Benz S–Class passenger cars that MB no longer controlled at the time it determined that the noncompliance existed.

Rule text: Paragraph S4.4 of FMVSS No. 138 requires in pertinent part:

S4.4 TPMS malfunction.

(a) The vehicle shall be equipped with a tire pressure monitoring system that includes a telltale that provides a warning to the driver not more than 20 minutes after the occurrence of a malfunction that affects the generation or transmission of control or response signals in the vehicle's tire pressure monitoring system. The vehicle's TPMS malfunction indicator shall meet the requirements of either S4.4(b) or S4.4(c).

(b) Dedicated TPMS malfunction telltale. The vehicle meets the requirements of S4.4(a) when equipped with a dedicated TPMS malfunction telltale that:

(1) Is mounted inside the occupant compartment in front of and in clear view of the driver;

(2) Is identified by the word ''TPMS'' as described under the ''Tire Pressure Monitoring System Malfunction'' Telltale in Table 1 of Standard No. 101 (49 CFR 571.101);

(3) Continues to illuminate the TPMS malfunction telltale under the conditions specified in S4.4(a) for as long as the malfunction exists, whenever the ignition locking system is in the ''On'' (''Run'') position; and

(4) (i) Except as provided in paragraph (ii), each dedicated TPMS malfunction telltale must be activated as a check of lamp function either when the ignition locking system is activated to the ''On'' (''Run'') position when the engine is not running, or when the ignition locking system is in a position between ''On'' (''Run'') and ''Start'' that is designated by the manufacturer as a check position.

(ii) The dedicated TPMS malfunction telltale need not be activated when a starter interlock is in operation.

(c) Combination low tire pressure/TPMS malfunction telltale. The vehicle meets the requirements of S4.4(a) when equipped with a combined Low Tire Pressure/TPMS malfunction telltale that:

(1) Meets the requirements of S4.2 and S4.3; and

(2) Flashes for a period of at least 60 seconds but no longer than 90 seconds upon detection of any condition specified in S4.4(a) after the ignition locking system is activated to the ''On'' (''Run'') position. After each period of prescribed flashing, the telltale must remain continuously illuminated as long as a malfunction exists and the ignition locking system is in the ''On'' (''Run'') position. This flashing and illumination sequence must be repeated each time the ignition locking system is placed in the ''On'' (''Run'') position until the situation causing the malfunction has been corrected. Multiple malfunctions occurring during any ignition cycle may, but are not required to, reinitiate the prescribed flashing sequence.

Noncompliance: MB described the noncompliances as follows:

In the subject vehicles, the tire pressure monitoring system malfunction indicator required by [paragraph] S4.4 of [FMVSS No. 138] may not illuminate in the manner required by FMVSS [No.] 138 due to a software misprogramming that occurred in a limited number of vehicles. When the system detects a malfunction (specifically, a missing or faulty wheel sensor signal in 1, 2 or 3 wheels), the malfunction indicator is activated within the required monitoring interval, but is activated continuously, rather than initially flashing for 60–90 seconds as required by [paragraph] S4.4(c)(2).

In addition, in a situation where all four wheel sensors/signals are missing, the subject programming will initially display the required warning, but will not automatically display it on subsequent restarts as required by [paragraph] S4.4(b)(3). This is because the system assumes that the owner has replaced the wheels which contain [Tire Pressure Monitoring System] TPMS sensors with wheels which do not contain sensors. In this situation, the driver will initially get a dedicated malfunction message indicating that the tire pressure monitoring system is inoperative, and that there are ''No Wheel Sensors.'' On subsequent restarts, this message is still accessible in the TPMS menu, but it does not automatically appear in the instrument cluster.

MB'S ANALYSIS OF THE NONCOMPLIANCES: *Absence of Flashing ''Malfunction'' Telltale:* The failure of the malfunction telltale to flash in the subject vehicles has no negative impact on safety because the additional supplemental data in the subject vehicles addresses the underlying purpose of the flashing requirement, and more than compensates for the absence of an initial flashing.

In developing the TPMS regulations, MB believes that NHTSA recognized that flashing of the TPMS malfunction warning should not be required for all vehicles and TPMS systems, depending on the distinctiveness and level of information contained in the malfunction indicator warning. The subject vehicles use one of the telltale symbols specified for ''combination'' telltales (the vehicle icon) when 1, 2 or 3 wheel sensors are missing or malfunctioning. Because this particular symbol is used, the vehicle is technically required to comply with the ''combination low pressure/TPMS malfunction'' telltale requirements of FMVSS No. 138 paragraph S4.4(c), which requires initial flashing, rather than the ''dedicated TPMS malfunction'' telltale requirement, which does not require initial flashing. Accordingly, under FMVSS No. 138 paragraph S4.4(c), this ''combination'' malfunction indicator is required to flash for 60–90 seconds upon initial illumination to notify the driver that the vehicle symbol stands for a system malfunction, as opposed to a low inflation pressure situation. Given the clear message conveyed by the warning in the subject vehicles, even without flashing, a driver would always understand whether his vehicle had a malfunction issue on the one hand, or a low tire pressure situation on the other.

The requirements for ''dedicated'' malfunction telltales at FMVSS No. 138 paragraph S4.4(b) do not require any flashing of the telltale upon initial detection of a fault or malfunction because the agency recognized that malfunction indicator telltales with sufficiently clear or distinct information alerting the driver to a problem with the function of their TPMS, as opposed to a low tire inflation pressure, did not need to flash in order to adequately alert the driver to a problem with the system.

The subject vehicles provide significantly more information than the minimum level required by the regulations for either dedicated or combination warnings. On the subject vehicles, additional text messages specifying the issue in clear terms appear at the same time that the required telltale appears. Specifically, the subject vehicles display the text message ''Wheel Sensor(s) Missing'' to alert the driver to a malfunction, in addition to simply displaying the vehicle icon required by the regulations as the minimum notification.

This text message, which expressly states that there is a system malfunction, is much more effective at conveying important safety information than relying on owners to review the owner's manual, and understand the distinction between a steady or flashing symbol with no words. In addition to the words expressly stating what the issue is (''Wheel Sensor(s) Missing''), the vehicle depicts an aerial view of a car with the actual tire pressure in each tire on the dashboard. In addition to the text, where a wheel sensor is missing or malfunctioning in up to 3 wheels, a

[2] MB's petition, which was filed under 49 CFR Part 556, requests an agency decision to exempt MB as motor vehicle manufacturers from the notification and recall responsibilities of 49 CFR Part 573 for 4,769 of the affected motor vehicles. However, a decision on this petition cannot relieve motor vehicle distributors and dealers of the prohibitions on the sale, offer for sale, introduction or delivery for introduction into interstate commerce of the noncompliant motor vehicles under their control after MB notified them that the subject noncompliance existed.

blank with two dashes appears next to the faulty wheel in lieu of a numeric pressure display, and the word ''Service'' is illuminated in the bottom of the display. Because the TPMS system in the subject vehicles provide significantly more than the minimum level of information, it does not rely on the difference between steady illumination and flashing to provide information on the type of TPMS issue to the driver.

In summary, MB believes that the regulations require only a flashing vehicle symbol to signal a system malfunction. The subject vehicles display a steady vehicle symbol, plus the following four additional pieces of information, which directly communicate the specific nature of the system malfunction: (1) The actual tire pressure on each wheel with a sensor; (2) two blank dashes next to a wheel with faulty sensors/signals; (3) the word ''Service'' on the bottom of the display; and (4) a clear text message expressly stating that there is a missing wheel sensor. Because the subject vehicles contain this supplemental information, the failure to initially flash the vehicle symbol due to a programming error in a limited number of vehicles has an inconsequential impact on safety.

Malfunction Involving All Four Wheel Sensors: Where all four wheel sensors are missing or inoperative, the subject vehicles utilize a dedicated warning that displays a clear and concise malfunction message that informs the driver clearly and precisely about what is wrong with the vehicle. However, this dedicated malfunction indicator will not re-illuminate upon subsequent drive cycles or after being manually cleared from the instrument cluster because the system assumes that the wheels have been replaced, and that continued notice of this unique situation is not needed. While the message is always available when the driver manually scrolls through the TPMS menu, the message does not continue to illuminate whenever the vehicle is ''on'' as required by FMVSS No. 138 paragraph S4.4(b)(3).

This functionality has an inconsequential impact on motor vehicle safety. In any situation where all four sensors fail while driving, the warning will always illuminate as required. The failure to activate on subsequent drive cycles is only an issue where all four wheel sensors/signals are missing from the beginning of a given drive cycle. The only situation in which all four wheel sensors would be removed would be where an owner goes to considerable effort to remove all four wheels (for example to replace the standard wheels with snow tires). In such a situation, the owner would be well aware that the wheels with sensors had been removed, and there would be no need to continually repeat the warning at each vehicle restart.

Similarly, although it is theoretically possible for all four wheel sensors to fail simultaneously, MB is not aware of any such failures in the field. The probability of such a situation occurring is virtually impossible. For example, one single sensor has a less than 100 ppm per year probability of failure. The likelihood of all four sensors failing within the same year is thus less than 0.00000001 ppm (or $1*10^{-16}$). In addition, to create the noncompliance scenario, all four sensors would need to fail at the same time, not just within the same year, thus further reducing the probability even more. A much more likely malfunction scenario would be where one (or in a very unlikely situation two) sensor signal fails in sequence, which would provide the operator with repeated warnings of the need to repair the wheel sensors upon each vehicle restart. In fact, this functionality is identical to the warning system for four missing wheel sensor signals used in Europe and in the rest of the world, where it has been determined to provide an adequate level of warning and motor vehicle safety.

In addition, the TPMS regulations recognize that there are certain circumstances where a TPMS warning may be manually cleared or reset by the owner and removed from the instrument cluster, even though the underlying condition still remains. The situation in subject vehicles is analogous.

Finally, MB believe that as with the absence of flashing discussed above, the subject vehicles display an initial notification of the loss of four wheel sensors that provides significantly more information than the minimum regulatory requirement. Where a dedicated malfunction telltale is used, the regulations allow the vehicle, as a minimum level of compliance, to simply display the abbreviation ''TPMS'' in yellow with no flashing. In the subject vehicles, rather than display a simple abbreviation, which would require the use of the owner's manual to determine that the message indicated a malfunction (as opposed to a low tire pressure situation, for example), the display specifically states that the ''Tire pressure monitor'' is ''inoperative,'' and more specifically that ''No wheel sensors'' are detected. With this enhanced level of information and clarity, it is not necessary for this particular message to repeat upon each vehicle re-start, especially given how rare this unique situation would be in actual use. For each of these reasons, this technical noncompliance does not represent a ''significant safety risk.''

In summation, MB believes that the described noncompliance of its vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

Comments: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. *By mail addressed to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. *Electronically:* by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date

indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

DATES: Comment closing date: July 27, 2012.

Authority: (49 U.S.C. 30118, 30120: Delegations of authority at CFR 1.50 and 501.8)

Issued on: June 20, 2012.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2012–15667 Filed 6–26–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Public Input on the Report to Congress on the U.S. and Global Reinsurance Market

AGENCY: Departmental Offices, Treasury.

ACTION: Notice and request for comment.

SUMMARY: Section 502 the Dodd-Frank Wall Street Reform and Consumer Protection Act. Pub. L. 111–203) (the Dodd-Frank Act), as codified in Section 313(o) of Title 31 of the United States Code, requires the Federal Insurance Office (FIO) to provide a report not later than September 30, 2012, describing the breadth and scope of the global reinsurance market and the critical role such market plays in supporting insurance in the United States. To assist FIO in completing this report, FIO issues this request for comment.

DATES: *Comment Due Date:* August 27, 2012. Early submissions are encouraged.

ADDRESSES: Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions. Comments will be available at *http://www.regulations.gov* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Electronic submissions are encouraged.

Comments may also be mailed to the Department of the Treasury, Federal Insurance Office, 1500 Pennsylvania Avenue NW., Washington, DC 20220. *Additional Instructions.* Please note the number from the ''Solicitation for Comment'' to which you are providing a response in your comment.

FOR FURTHER INFORMATION CONTACT: Michael T. McRaith, Director Federal Insurance Office, Department of the Treasury, (202) 622–5394 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act requires FIO to conduct a study describing the breadth and scope of the global reinsurance market and the critical role such market plays in supporting insurance in the United States (31 U.S.C. 313(o)(1)).

II. Solicitation for Comments

Commenters are invited to submit views on:

1. The purpose of reinsurance;
2. The breadth and scope of the global reinsurance market;
3. The role that the global reinsurance market plays in supporting insurance in the United States;
4. The effect of domestic and international regulation on reinsurance in the United States;
5. The role and impact of government reinsurance programs; and
6. The coordination of reinsurance supervision nationally and internationally.
7. Any other topics relevent to this report.

Authority: Pub. L. 111–203

Michael T. McRaith,

Director, Federal Insurance Office, Department of the Treasury.

[FR Doc. 2012–15685 Filed 6–26–12; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Claim for United States Savings Bonds Not Received.

DATES: Written comments should be received on or before August 27, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@bpd.treas.gov.* The opportunity to make comments online is also available at *www.pracomment.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Bruce A. Sharp, Bureau of the Public Debt, 200 Third Street A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Claim for United States Savings Bonds Not Received.

OMB Number: 1535–0098.

Form Number: PD F 3062–4.

Abstract: The information is used to support a request for substitute savings bonds in lieu of savings bonds not received.

Current Actions: None.

Type of Review: Revision.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 15,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 2,500.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 22, 2012.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2012–15645 Filed 6–26–12; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0265]

Agency Information Collection (Educational/Vocational Counseling Application) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before July 27, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0265'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, Fax (202) 632–7634or email *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0265.''

SUPPLEMENTARY INFORMATION:

Title: Educational/Vocational Counseling Application, VA Form 28–8832.

OMB Control Number: 2900–0265.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 28–8832 to apply for counseling services. VA provides personal counseling as well as counseling in training and career opportunities. The information collected will be used to determine the claimant's eligibility for counseling.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 6, 2012, at pages 20887–20888.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,550 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 5,100.

Dated: June 22, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–15654 Filed 6–26–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0321]

Agency Information Collection (Appointment of Veterans Service Organization/or Individuals as Claimant's Representative) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 27, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0321'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, Fax (202) 632–7634 or email *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0321.''

SUPPLEMENTARY INFORMATION:

Titles:

a. Appointment of Veterans Service Organization as Claimant's Representative, VA Form 21–22.

b. Appointment of Individual as Claimant's Representative, VA Form 21–22a.

OMB Control Number: 2900–0321.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Forms 21–22 and 21–22a to appoint a veterans service organization or an individual to assist in the preparation, representation, and prosecution of claims for VA benefits and to authorize VA to disclose any or all records to the appointed representative.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 6, 2012, at pages 20890–20891.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Form 21–22—27,083 hours.

b. VA Form 21–22a—533 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents:

a. VA Form 21–22—325,000.

b. VA Form 251–22a—6,400.

Dated: June 22, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–15655 Filed 6–26–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0682]

Agency Information Collection Activities (Advertising, Sales, and Enrollment Materials, and Candidate Handbooks) Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget

(OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 27, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0682'' in any correspondence.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, FAX (202) 632–7583 or email: *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0682.''

SUPPLEMENTARY INFORMATION:

Title: Advertising, Sales, and Enrollment Materials, and Candidate Handbooks, 38 CFR 21.4252(h).

OMB Control Number: 2900–0682.

Type of Review: Extension of a currently approved collection.

Abstract: VA approved educational institutions offering courses approved for the enrollment of Veterans, or eligible persons, and organizations or entities offering licensing or certification tests approved for payment of educational assistance as reimbursement to Veterans or eligible persons who took such tests, must maintain a complete record of all advertising, sales materials, enrollment materials, or candidate handbooks that educational institutions or its agents used during the preceding 12-month period. The materials are examined by VA and State Approving Agency employees to ensure that educational institutions or its agents are following VA approval guidelines.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 6, 2012, at pages 20886–20887.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,373 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 13,492.

Dated: June 22, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–15660 Filed 6–26–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0673]

Agency Information Collection (One-VA Identification Verification Card) Activities Under OMB Review

AGENCY: Office of Operations, Security, and Preparedness, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that The Office of Operations, Security, and Preparedness, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 27, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0673'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, Fax (202) 632–7583 or email *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0673.''

SUPPLEMENTARY INFORMATION:

Title: Request for One-VA Identification Card.

OMB Control Number: 2900–0673.

Type of Review: Extension of a currently approved collection.

Abstract: VA PIV Enrollment System Portal is use to collect pertinent information from Federal employees, contractors, and affiliates prior to issuing a Department identification credential. VA will use the data collected to personalize, print, and issue a PIV card.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 6, 2012, at page 20889.

Affected Public: Federal government.

Estimated Annual Burden: 8,333 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 100,000.

Dated: June 22, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–15658 Filed 6–26–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0128]

Agency Information Collection (Notice of Lapse—Government Life Insurance) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 27, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0128'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of

Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, fax (202) 632–7583 or email *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0128.''

SUPPLEMENTARY INFORMATION:

Titles:

a. Notice of Lapse—Government Life Insurance, VA Form 29–389.

b. Application for Reinstatement, VA Form 29–389–1.

OMB Control Number: 2900–0128.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 29–389 and 29–389–1 are used to inform claimants that their government life insurance has lapsed or will lapse due to nonpayment of premiums. The claimant must complete the application to reinstate the insurance and to elect to pay the past due premiums. VA uses the data collected to determine the claimant's eligibility for reinstatement of such insurance.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 12, 2012, at page 22069.

Affected Public: Individuals or Households.

Estimated Annual Burden:

a. VA Form 29–389—3,399 hours.

b. VA Form 29–389–1—1,060 hours.

Estimated Average Burden per Respondent:

a. VA Form 29–389—12 minutes.

b. VA Form 29–389–1—10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VA Form 29–389—16,993.

VA Form 29–389–1—6,359.

Dated: June 22, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–15661 Filed 6–26–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0386]

Agency Information Collection (Interest Rate Reduction Refinancing Loan Worksheet) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before July 27, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0386'' in any correspondence

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–7485, Fax (202) 565–7870 or email *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0386.''

SUPPLEMENTARY INFORMATION:

Title: Interest Rate Reduction Refinancing Loan Worksheet, VA Form 26–8923.

OMB Control Number: 2900–0386.

Type of Review: Extension of a currently approved collection.

Abstract: Lenders are required to submit VA Form 26–8923, to request a guaranty on all interest rate reduction refinancing loan and provide a receipt as proof that the funding fee was paid or evidence that a claimant was exempt from such fee. VA uses the data collected to ensure lenders computed the funding fee and the maximum permissible loan amount for interest rate reduction refinancing loans correctly.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 6, 2012, at page 20890.

Affected Public: Business or other for profit.

Estimated Annual Burden: 23,333 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 140,000.

Dated: June 22, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–15656 Filed 6–26–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0734]

Agency Information Collection (Report of General Information) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 27, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0734.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, Fax (202) 632–7583 or email *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0734.''

SUPPLEMENTARY INFORMATION:

Titles:

a. VA Form 21–0820, Report of General Information.

b. VA Form 21–0820a, Report of Death of Beneficiary.

c. VA Form 21–0820b, Report of Nursing Home Information.

d. VA Form 21–0820c, Report of Defense Finance and Accounting Service (DFAS).

e. VA Form 21–0820d, Report of Lost Check.

f. VA Form 21–0820e, Report of Incarceration.

g. VA Form 21–0820f, Month of Death Check.

OMB Control Number: 2900–0734.

Type of Review: Extension of currently approved collection.

Abstract: The forms will be used by VA personnel to document verbal information obtained telephonically from claimants or their beneficiary. The data collected will be used as part of the evidence needed to determine the claimant's or beneficiary's eligibility for benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 18, 2012, at page 23322.

Affected Public: Federal Government.

Estimated Annual Burden:

a. VA Form 21–0820, Report of General Information—19,667.

b. VA Form 21–0820a, Report of Death of Beneficiary—6,667.

c. VA Form 21–0820b, Report of Nursing Home Information—2,500.

d. VA Form 21–0820c, Report of Defense Finance and Accounting Service (DFAS)—2,500.

e. VA Form 21–0820d, Report of Lost Check—2,500.

f. VA Form 21–0820e, Report of Incarceration—833.

g. VA Form 21–0820f, Month of Death Check—833.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents:

a. VA Form 21–0820, Report of General Information—2,360,000.

b. VA Form 21–0820a, Report of Death of Beneficiary—80,000.

c. VA Form 21–0820b, Report of Nursing Home Information—30,000.

d. VA Form 21–0820c, Report of Defense Finance and Accounting Service (DFAS)—30,000.

e. VA Form 21–0820d, Report of Lost Check—30,000.

f. VA Form 21–0820e, Report of Incarceration—10,000.

g. VA Form 21–0820f, Month of Death Check– 10,000.

Dated: June 22, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–15657 Filed 6–26–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0676]

Agency Information Collection (National Acquisition Center Customer Response Survey) Activities Under OMB Review

AGENCY: Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Office of Acquisition and Logistics, Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 27, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0676'' in any correspondence

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, FAX (202) 632–7583 or email: *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0676.''

SUPPLEMENTARY INFORMATION:

Title: Department of Veterans Affairs (VA) National Acquisition Center Customer Response Survey, VA Form 0863.

OMB Control Number: 2900–0676.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 0863 will be used to collect customer's feedback and suggestions on delivered products and services administered by the National Acquisition Center (NAC). NAC will use the data to improve and/or enhance its program operations for both internal and external customers.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 6, 2012 at page 20887.

Affected Public: Federal Government.

Estimated Annual Burden: 83 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,000.

Dated: June 22, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–15659 Filed 6–26–12; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 77 Wednesday,

No. 124 June 27, 2012

Part II

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Arizona; Nogales PM_{10} Nonattainment Area Plan; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0458; FRL–9693–6]

Approval and Promulgation of Implementation Plans; Arizona; Nogales PM_{10} Nonattainment Area Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a state implementation plan revision submitted by the Arizona Department of Environmental Quality to address the moderate area PM_{10}, particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers, planning requirements for the Nogales nonattainment area. Consistent with this proposal, EPA is also proposing to approve the following plan elements as meeting the requirements of the Clean Air Act: the Nogales nonattainment area 2008 and 2011 emission inventories; the demonstration that the Nogales nonattainment area is attaining the National Ambient Air Quality Standard for PM_{10}, but for international emissions sources in Nogales, Mexico; the demonstration that reasonably available control measures sufficient to meet the standard have been implemented in the nonattainment area; the reasonable further progress demonstration; the demonstration that implementation of measures beyond those needed for attainment meet the contingency measure requirement; and, the motor vehicle emissions budget for the purposes of determining the conformity of transportation plans, programs, and projects with this PM_{10} plan.

DATES: Written comments must be received on or before July 27, 2012.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0458, using one of the following methods: Via the Federal eRulemaking Portal, at *www.regulations.gov,* please follow the on-line instructions; via Email to *wamsley.jerry@epa.gov;* via mail or delivery to Jerry Wamsley, Air Planning Office, AIR–2, Environmental Protection Agency (EPA) Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information you consider to be CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EPA, your email address will be automatically captured and included as part of the public comment. 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: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jerry Wamsley, Air Planning Office, AIR–2, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, telephone number: (415) 947–4111, or email address, *wamsley.jerry@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we'', ''us'' or ''our'' are used, we mean EPA. We are providing the following outline to help locate information in this proposal.

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I. The PM_{10} National Ambient Air Quality Standard and the Nogales PM_{10} Nonattainment Area

A. PM_{10} National Ambient Air Quality Standard

The EPA sets the National Ambient Air Quality Standard (NAAQS) for certain ambient air pollutants at levels required to protect human health and the environment. Particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers, or PM_{10}, is one of these ambient air pollutants for which EPA has established health-based standards. On July 1, 1987, EPA promulgated two primary standards for PM_{10}: A 24-hour standard of 150 micrograms per cubic meter (μg/m³); and, an annual PM_{10} standard of 50 μg/m³. EPA also promulgated secondary PM_{10} standards that were identical to the primary standards. 52 FR 24634; (July 1, 1987). Because they are identical, we refer to the primary and secondary standards using the singular term, ''standard.'' Effective December 18, 2006, EPA revoked the annual PM_{10} standard but retained the 24-hour PM_{10} standard. 71 FR 61144; (October 17, 2006).

An area attains the 24-hour PM_{10} standard when the expected number of days per calendar year with a 24-hour concentration in excess of the standard (referred to herein as an ''exceedance''), is equal to or less than one,[1] as determined in accordance with 40 CFR part 50, appendix K. See 40 CFR 50.6 and 40 CFR part 50, appendix K. Conversely, a violation of the PM_{10} NAAQS occurs when the number of expected annual exceedances of the 24-hour standard is greater than one.

[1] An exceedance is defined as a daily value that is above the level of the 24-hour standard, 150 μg/m³, after rounding to the nearest 10 μg/m³ (i.e., values ending in five or greater are to be rounded up). Thus, a recorded value of 154 μg/m³ would not be an exceedance since it would be rounded to 150 μg/m³; whereas, a recorded value of 155 μg/m³ would be an exceedance since it would be rounded to 160 μg/m³. See 40 CFR part 50, appendix K, section 1.0.

B. Designation and Classification of PM_{10} Nonattainment Areas, Including the Nogales Nonattainment Area

Areas meeting the requirements of section 107(d)(4)(B) of the Clean Air Act (CAA or ''Act'') were designated nonattainment for PM_{10} by operation of law and classified ''moderate'' upon enactment of the 1990 Clean Air Act Amendments. These areas included all former Group I PM_{10} planning areas identified in 52 FR 29383, (August 7, 1987), as further clarified in 55 FR 45799, (October 31, 1990), and any other areas violating the NAAQS for PM_{10} prior to January 1, 1989. A **Federal Register** notice announcing the areas designated nonattainment for PM_{10} upon enactment of the 1990 Amendments, known as ''initial'' PM_{10} nonattainment areas, was published on March 15, 1991, (56 FR 11101); and, a subsequent **Federal Register** document correcting the description of some of these areas was published on August 8, 1991, (56 FR 37654).

As a former ''Group I'' area, the Nogales nonattainment area (NA) was included in the March 1991 list of initial moderate PM_{10} nonattainment areas. Later, we codified the PM_{10} nonattainment designations and moderate area classifications in 40 CFR part 81 (56 FR 56694; November 6, 1991). For ''moderate'' nonattainment areas, such as the Nogales NA, CAA section 188(c) of the 1990 Amended Act established an attainment date of December 31, 1994. On January 11, 2011, pursuant to section 188(b)(2) of the CAA, we determined that the Nogales NA met the PM_{10} NAAQS as of the applicable attainment date, December 31, 1994. See 76 FR 1532; (January 11, 2011). The designation, classification, and boundaries of the Nogales NA are codified at 40 CFR 81.303.

C. Clean Air Act Plan Requirements for Moderate PM_{10} Nonattainment Areas

Along with the new designations, classifications, and attainment dates, the CAA as amended in 1990 also established new planning requirements. States were required to develop and submit state implementation plan (SIP) revisions providing for, among other elements, implementation of reasonably available control measures (RACM) for control of PM_{10}, a demonstration that the plan would provide for attainment by the applicable attainment date (''attainment demonstration''), and contingency measures, for all moderate PM_{10} nonattainment areas. See CAA sections 172(c) and 189(a). As discussed later, CAA section 179B(a) allows a State to submit a demonstration that the plan would be adequate to attain and maintain the standard but for emissions emanating from outside the United States in lieu of an attainment demonstration. CAA section 179B(a) does not, however, relieve qualifying moderate PM_{10} nonattainment areas of the other SIP requirements, including but not limited to RACM and contingency measures.

In response, on June 14, 1993, the Arizona Department of Environmental Quality (referred to herein as ''ADEQ,'' ''Arizona,'' or ''the State'') submitted the ''Final State Implementation Plan for the Nogales PM_{10} Nonattainment Area,'' June 1993 (''1993 Nogales PM_{10} Plan''). The 1993 Nogales PM_{10} Plan identifies emissions sources located in Mexico as the principal sources affecting ambient PM_{10} concentrations in the area. EPA has not taken action on the 1993 Nogales PM_{10} Plan. Today's action relates to an updated plan for the Nogales PM_{10} nonattainment area that is intended by ADEQ, once submitted in final form, to supersede the 1993 Nogales PM_{10} Plan.

II. Arizona's State Implementation Plan Submittal To Address PM_{10} Attainment in the Nogales Nonattainment Area

A. Arizona's Submittal and Clean Air Act Procedural Requirements

Today's proposed action concerns the *Proposed State Implementation Plan for the Nogales PM_{10} Nonattainment Area* (''Nogales 2012 Plan''), submitted by ADEQ on May 29, 2012. ADEQ concurrently requested that EPA ''parallel process'' our review and proposed action on the Nogales 2012 Plan addressing the CAA's PM_{10} moderate area requirements for the Nogales NA.[2] [3] We have agreed to parallel process the Nogales 2012 Plan concurrently with the ADEQ's public hearing and submittal process using our authority under 40 CFR part 51, appendix V. ADEQ's parallel processing request and the Nogales 2012 Plan consist of the following documents:

[2] Under EPA's ''parallel processing'' procedure, EPA proposes rulemaking action on a proposed SIP revision concurrently with the State's public review process. If the State's proposed SIP revision is changed, EPA will evaluate that subsequent change and may publish another notice of proposed rulemaking. If no significant change is made, EPA will propose a final rulemaking on the SIP revision after responding to any submitted comments. Final rulemaking action by EPA will occur only after the final SIP revision has been fully adopted by ADEQ and submitted formally to EPA for approval as part of the Arizona SIP. See 40 CFR part 51, appendix V.

[3] Letter from Eric Massey, Director, Air Quality Division, Arizona Department of Environmental Quality, to Jared Blumenfeld, Regional Administrator, EPA, dated May 29, 2012.

''Proposed State Implementation Plan for the Nogales PM_{10} Nonattainment Area'' with Appendices A–J, May 17, 2012. The Nogales 2012 Plan, supporting documents, and public hearing information can also be found at ADEQ's Web site, *http://www.azdeq.gov/environ/air/plan/notmeet.html#nog.*

We have reviewed the ADEQ's May 29, 2012 parallel processing submittal against the completeness criteria at 40 CFR part 51, appendix V, section 2.3.1. and find that the submittal is complete. These completeness criteria are used specifically for parallel processing submittals. Once we have received ADEQ's supplemental submittal after the State concludes their public hearing process, we will use the general completeness criteria at 40 CFR part 51, appendix V, 2.0 to determine completeness of that submittal. Our completeness finding on this supplemental submittal will be made as part of our final action on this proposal.

B. Description of the Nogales Nonattainment Area

Covering 76.1 square miles, the Nogales NA is located within Santa Cruz County, Arizona, with the southernmost boundary of the Nogales NA and Santa Cruz County being the United States (U.S.)/Mexico border. Adjacent to the U.S./Mexico border, the city of Nogales, Arizona is 60 miles south of Tucson, Arizona. The city of Nogales, Arizona is the largest city and population center in the Nogales NA.

The Nogales NA is located within the Sonoran Desert. This desert covers 120,000 square miles with a minimum elevation of 2,500 feet above sea level and is in the Basin and Range topographic province. This topography is characterized by north-south elongated valleys surrounded by mountain ranges. Nogales is located in such a north-south valley created by the Nogales Wash running north to the Santa Cruz River. The mean elevation in Nogales, Arizona is 3,865 feet above sea level. Major highways in the Nogales, Arizona area are U.S. Interstate 19 which connects Tucson, Arizona to Nogales, Arizona and continues south into Mexico, where it becomes Federal Highway 15, and Arizona State Route 82, which connects Nogales, Arizona with Patagonia, Arizona (19 miles) and Sonoita (31 miles) to the northeast.

Nogales, Mexico lies directly south of Nogales, Arizona across the U.S./Mexico border. Taken together and referred to as Ambos Nogales, the communities of Nogales, Arizona and Nogales, Mexico comprise the largest international border community in Arizona, with a combined population of 232,550 inhabitants in 2010, approximately 91 percent of whom live in Nogales, Mexico.[4] The mean elevation in Nogales, Mexico is 4,265 feet above sea level.[5]

III. CAA and Regulatory Requirements for Moderate Area PM_{10} Attainment Plans and Nonattainment Areas Influenced by International Transport

A. Moderate PM_{10} Area Planning Requirements

The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in subparts 1 and 4 of the CAA, including sections 110, 172, and 189 of the statute. These sections will be discussed further during the review for each plan element, later in this proposal. Also, we have issued guidance in a General Preamble describing how we will review state submittals under Title I of the CAA, including moderate PM_{10} nonattainment areas. See 57 FR 13498; (April 16, 1992) and 57 FR 18070; (April 28, 1992). In general, moderate area PM_{10} plans must include the following elements: a current, comprehensive emissions inventory of emissions sources in the nonattainment area; provisions to ensure that reasonably available control measures and/or reasonably available control technologies (RACM/RACT) have been implemented in the nonattainment area; provisions demonstrating attainment of the PM_{10} NAAQS with quantitative milestones which show reasonable further progress (RFP) towards attainment of the NAAQS as expeditiously as practicable; contingency measures for RFP and attainment; and, a motor vehicle emissions budget for the purpose of determining the conformity of transportation programs and plans developed by State transportation agencies.[6] Because the Nogales NA lies along the international border with Mexico, the CAA allows Arizona to submit a demonstration that the area would have attained the PM_{10} NAAQS but for international transport from Mexico in lieu of a demonstration that the area has attained the PM_{10} NAAQS. The statutory requirements and guidance for such a demonstration under section 179B of the CAA are discussed next. Under CAA section 179B, however, other SIP requirements, such as RACM and contingency measures, among other requirements, continue to apply to PM_{10} nonattainment areas even if they quality for relief from the attainment demonstration requirement.

B. Clean Air Act Provisions and EPA Guidance Concerning International Border Areas

Because the southern boundary of the Nogales NA lies along the international border with Mexico and transport of PM_{10} emissions from Mexico affects air quality in Nogales, Arizona, there are specific statutory requirements in the CAA that apply to the Nogales NA. With a demonstration from Arizona showing that the Nogales NA would have attained the PM_{10} NAAQS, but for international sources of PM_{10}, EPA may approve an attainment plan provided by the State, even if the attainment plan does not demonstrate attainment of the NAAQS. The PM_{10} attainment plan, however, must meet other requirements of the CAA, contingent upon meeting the NAAQS but for international transport. Such a ''but for'' attainment demonstration, however, must be consistent with statutory and regulatory requirements. First, we will review the statutory basis for a ''but for'' attainment demonstration. Secondly, we will review EPA's published guidance on how such an analysis may be structured. Lastly, we will review how EPA determines whether an area's air quality is meeting the PM_{10} NAAQS using air quality data gathered at monitoring sites in the nonattainment area and our application of 40 CFR part 50, appendix K.

1. Section 179B of the Clean Air Act

For international border areas like the Nogales NA, CAA section 179B(a) provides that notwithstanding any other provision of law, an implementation plan or plan revision shall be approved by the Administrator if such plan or

[4] In 2010, Nogales, Arizona had 20,017 inhabitants and Nogales, Mexico had 212,533 inhabitants. U.S. Census Bureau 2010 and Instituto Nacional de Estadistica Geografia e Informatica, (INEGI) 2010.

[5] ''Statistical Municipal Workbook for Nogales, Sonora,'' 2005 edition, INEGI.

[6] The Nogales PM_{10} nonattainment area is subject to the ''moderate'' area, not the ''serious'' area, SIP planning requirements under the CAA. This is because the mandatory ''bump-up'' from ''moderate'' to ''serious'' under CAA section 188(b)(2) is only triggered if any area fails to attain the standard by the applicable attainment date (in this case, 1994), and the Nogales area, which was originally designated nonattainment for PM_{10} based on exceedances measured in the late 1980's, attained the standard by 1994. Several years after 1994, the Nogales area once again began to experience exceedances but such post-attainment date exceedances do not trigger the mandatory ''bump-up'' provision in CAA section 188(b)(2). The issue of the applicability of the ''bump-up'' provision in CAA section 188(b)(2) to the Nogales area was addressed fully in EPA's final determination that the Nogales area attained the PM_{10} standard by the applicable attainment date. See 76 FR 1532; (January 11, 2011).

revision meets all the requirements applicable to it other than a requirement that such plan or revision demonstrate attainment and maintenance of the relevant national ambient air quality standards by the attainment date specified under the applicable provision, or in a regulation promulgated under such provision, and the submitting State establishes to the satisfaction of the Administrator that the implementation plan of such State would be adequate to attain and maintain the relevant national ambient air quality standards by the attainment date specified under the applicable provision, or in a regulation promulgated under such provision, but for emissions emanating from outside of the United States.

As stated above, notwithstanding any other provision of law, should Arizona establish to the satisfaction of the EPA Administrator that the Nogales NA would have attained the PM_{10} NAAQS by the applicable attainment date but for emissions emanating from outside the U.S., then the Nogales NA is not subject to the provisions of CAA section 189(a)(1)(b), requiring a demonstration of attainment of the PM_{10} standards by the applicable attainment date.[7] The underlying purpose of section 179B is to balance the requirements of the CAA in nonattainment areas adjacent to international borders affected by transport of pollution from foreign sources with the consideration that the State does not have the jurisdiction to control these foreign sources of pollution affecting attainment of the NAAQS in that State.

2. The 1994 General Preamble Addendum

As part of guidance relating to serious PM_{10} nonattainment areas (General Preamble Addendum), EPA included a discussion of the requirements applicable to international border areas.[8] The General Preamble Addendum reviews the information and methods that may be used to determine if an international border area qualifies for treatment under CAA section 179B and to demonstrate that the area would attain the relevant NAAQS but for emissions emanating from outside the U.S.

The General Preamble Addendum provides that ''several types of information may be used to evaluate the impact of emissions emanating from outside the U.S.'' The EPA will consider the information ''for individual nonattainment areas on a case-by-case basis in determining whether an area may qualify for treatment under section 179B.'' See 59 FR 42001; (August 16, 1994). The General Preamble Addendum suggests five methods that may be used to determine the impact of emissions emanating from outside the U.S. Below, we describe the five methods in general terms and later, when reviewing Arizona's section 179B analysis and demonstration, we will discuss the particular applicability of these five methods to the analysis done for the Nogales NA.

Method 1. Place several ambient PM_{10} monitors and a meteorological station measuring wind speed and direction in the U.S. nonattainment area near the international border. Evaluate and quantify any changes in monitored PM_{10} concentrations with a change in the predominant wind direction.

Method 2. Comprehensively inventory PM_{10} emissions within the U.S. in the vicinity of the nonattainment area and demonstrate that those sources, after application of reasonably available controls, do not cause the NAAQS to be exceeded. This analysis must include an influx of background PM_{10} in the area. Background PM_{10} levels could be based on concentrations measured in a similar area not influenced by emissions from outside the U.S.

Method 3. Analyze ambient sample filters for specific types of particles emanating from across the border. Although not required, characteristics of emissions from sources may be helpful so as to better demonstrate the causal relationship with and contribution to exceedances in the U.S. nonattainment area due to domestic and international emissions.

Method 4. Inventory the sources on both sides of the border and compare the magnitude of PM_{10} emissions originating within the U.S. to those emanating from outside the U.S.

Method 5. Perform air dispersion and/or receptor modeling to quantify the relative impacts on the nonattainment area of sources located within the U.S., and of foreign sources of PM_{10} emissions.

As stated in the General Preamble Addendum, the EPA will consider the information ''for individual nonattainment areas on a case-by-case basis in determining whether an area may qualify for treatment under section 179B.'' Because the individual circumstances surrounding a nonattainment area may differ widely whether by data, resources, or emissions sources, EPA anticipates that ''the State may use one or more of these types of information or other techniques, depending on their feasibility and applicability, to evaluate the impact of emissions emanating from outside the U.S. on the nonattainment area.'' See 59 FR 42001; (August 16, 1994). Therefore, the analysis Arizona has provided for the Nogales NA is specific to this nonattainment area only and the timeframe, data, and circumstances therein, and EPA is evaluating the analysis as such.

As explained earlier, the underlying purpose of section 179B is to balance the requirements of the CAA in nonattainment areas adjacent to international borders affected by transport of pollution from foreign sources with the consideration that the State does not have the jurisdiction to control these foreign sources of pollution affecting attainment of the NAAQS in that State. In this light, the General Preamble Addendum discusses several attainment plan requirements as applied to nonattainment areas affected by international transport.

The 1994 General Preamble Addendum discusses the requirements for RACM as applied to nonattainment areas affected by international transport. In international border areas, ''RACM/RACT must be implemented to the extent necessary to demonstrate attainment by the applicable attainment date if emissions emanating from outside the U.S. were not included in the analysis.'' See 59 FR 42001; (August 16, 1994). As set forth in section 179B(a)(2), a State's moderate area PM_{10} plan must be ''adequate'' to attain and maintain the PM_{10} NAAQS, but for emissions from outside the U.S. Therefore, nothing in section 179B relieves a State from the requirement to address and implement RACM. Nonetheless, States are not required to implement control measures that go beyond what the plan demonstrates would otherwise be adequate for timely attainment and maintenance of the PM_{10} NAAQS but for emissions from outside the U.S. Furthermore, to the degree that the State can satisfactorily demonstrate that implementation of a control measure clearly would not advance the area's attainment date, EPA may conclude that these control measures are unreasonable and do not constitute RACM for the nonattainment area. See 59 FR 42001; (August 16, 1994).

[7] As discussed earlier, we determined that the Nogales NA met the PM_{10} NAAQS as of the applicable attainment date for moderate nonattainment areas, December 31, 1994; consequently, we did not reclassify the area to ''serious.'' See 76 FR 1532; (January 11, 2011).

[8] ''State Implementation Plans for Serious PM_{10} Nonattainment Areas, and Attainment Date Waivers for PM_{10} Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,''; 59 FR 41998, August 16, 1994.

The 1994 General Preamble Addendum also discusses the requirements for reasonable further progress (RFP) and contingency measures as applied to nonattainment areas affected by international transport. Section 179B(a)(1) does not relieve a nonattainment area of the CAA requirements for RFP and contingency measures. In international border areas, however, ''EPA will not require the contingency measures for PM_{10} to be implemented after the area fails to attain if EPA determines that the area would have attained the NAAQS, but for emissions emanating from outside the U.S.'' Conversely, to the degree that contingency measures are needed to control U.S. sources of PM_{10} to meet RFP or attainment contingency measure requirements but for PM_{10} emissions emanating from outside of the U.S., then the statutory requirements for RFP and contingency measures still apply. See 59 FR 42001, 42002; (August 16, 1994).

3. Statutory Requirements and Guidance for Determining Attainment of the PM_{10} NAAQS

EPA determines whether an area's air quality is meeting the PM_{10} NAAQS based upon air quality data gathered at monitoring sites in the nonattainment area. Then, EPA reviews the data to determine the area's air quality status according to 40 CFR part 50, appendix K. Three consecutive years of clean air quality data (i.e., no more than one expected exceedance per year) is generally needed to show attainment of the 24-hour PM_{10} standard. As defined by 40 CFR part 50, appendix K, a complete year of air quality data is composed of all four calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days.

Under 40 CFR part 50, appendix K, a nonattainment area meets the 24-hour PM_{10} NAAQS when the expected number of days per calendar year with a 24-hour average concentration above 150 micrograms per cubic meter ($\mu g/m^3$) is equal to or less than one. In general, the number of expected exceedances at a site which samples every day is determined by recording the number of exceedances in each calendar year and then averaging them over the most recent three calendar years. For sites which do not sample every day, EPA requires adjusting the observed exceedances to account for days not sampled. The procedures for making this data adjustment are specified in 40 CFR part 50, appendix K.

For this review of the Nogales NA and the contribution of international emissions, the standard we will use to demonstrate attainment of the PM_{10} NAAQS, ''but for'' international emissions, is similar to the one described above: The expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ must be equal to or less than one. To demonstrate that the Nogales NA has met the PM_{10} standard ''but for'' emissions from Mexico, the State's analysis must show that no more than three exceedances, based on data completeness and every day sampling, over the specific three-year analysis period, would have occurred on the U.S. side of the border, setting aside any contributions from Mexican sources of PM_{10}.

IV. Review of the Nogales 2012 Plan

In this section, according to the statutory requirements and guidance discussed above in section III, we will review Arizona's submitted Nogales 2012 Plan and section 179B analysis and demonstration that the Nogales NA is attaining the PM_{10} NAAQS but for international emissions sources from Nogales, Mexico.

A. Emissions Inventories

1. Requirements for Emissions Inventories

Section 172(c)(3) of the CAA requires plan submittals to include a comprehensive, accurate, and current inventory of actual emissions from all sources in the nonattainment area.

2. Review of the Nogales Nonattainment Area Emissions Inventories

Arizona submitted emissions inventories for the Nogales NA for the years 2008 and 2011. These emissions inventories were calculated using information from version 1.5 of EPA's 2008 National Emission Inventory (NEI) and the NEI emissions estimates for Santa Cruz County, Arizona. A Nogales NA 2008 emissions inventory was scaled from the larger Santa Cruz County emissions inventory using a combination of population and land allocation ratios. A specific point source's location was the basis for assigning point sources to the Nogales NA emissions inventory. On-road motor vehicle PM_{10} emissions for 2008 and 2011 were calculated using County-level data for 2008 and 2011 and the MOVES2010a model.[9] The larger and remaining portions of the 2011 emissions inventory, particularly area sources, were calculated from the 2008 emissions inventory according to estimates of population and economic growth. An overview of the Nogales NA 2008 and 2011 emissions inventories is provided here; for detailed results and a complete discussion of the methodology used to produce the emission inventories, see ''PM_{10} Emission Inventories for 2008 and 2011, Nogales Non-Attainment Area, Santa Cruz County, Arizona'', in Appendix B of the Nogales 2012 Plan.

EPA's NEI database contains information about sources that emit criteria air pollutants and their precursors, and hazardous air pollutants. The database includes estimates of annual air pollutant emissions, including PM_{10}, from point, nonpoint, and mobile sources in the 50 states, including Arizona, and specifically Santa Cruz County. Collaborating with the states, EPA develops the emissions inventory and releases an updated version of the NEI database every three years. A complete description of the development of the 2008 NEI may be found at the following URL: *http://www.epa.gov/ttn/chief/net/2008inventory.html.*

In calculating PM_{10} emissions from on-road mobile sources in Santa Cruz County, Arizona used the MOVES2010a version dated September 23, 2010 (hereafter referred to as ''MOVES''). This is the current version of the MOVES model. MOVES allows the use of county-specific data concerning factors such as the average speed distribution of on-road vehicles, daily vehicle miles traveled, and road types among others in place of national default values. The MOVES model requires the use of county-specific data for SIP purposes. In this instance, the MOVES calculation was performed using input data from the 2008 NEI for Santa Cruz County. Similar MOVES model runs were completed to estimate 2011 on-road mobile source PM_{10} emissions.

Although EPA has no specific guidance on assigning emissions sources from a county level of analysis to a smaller area within that county, for the Nogales NA emissions inventory, Arizona used a combination of population ratios, land area ratios, and point source locations within the Nogales NA to determine the appropriate allocation of county-wide emissions to the Nogales NA. See Table

[9] On March 2, 2010, EPA approved the availability of the Motor Vehicle Emissions Simulator model (MOVES2010a) in official SIP submissions to EPA regarding air quality and for certain transportation conformity analyses outside the state of California; see 75 FR 9411. Also see EPA's Web site for more information, *http://www.epa.gov/otaq/models/moves/index.htm.*

1 for the specific population and land allocation ratios used to scale PM_{10} emissions from the County to the Nogales NA level.

TABLE 1—SUMMARY OF LAND AREA AND 2008 POPULATION ALLOCATION RATIOS

	Santa Cruz County	Nogales NA	Allocation ratio (percent)
Land Area (square miles)	[10] 1,237.6	76.1	6.15
2008 Population	[11] 43,091	[12] 23,735	55.1

The State used data from the U.S. Census Bureau to estimate the 2008 population of the Nogales NA population and Santa Cruz County. A land area-weighted emission ratio was developed using U.S. Census geographic data and confirmed with Arizona Commerce Authority data.[13] Some source categories, such as agricultural emissions, are likely to be proportional to land area; consequently, they are logically allocated by the land area ratio. To confirm whether specific point sources in the Santa Cruz County emissions inventory should be included in the Nogales NA emissions inventory, ADEQ and EPA used visual inspections with location information, such as satellite photography using Google Earth.

As shown in Table 2, in 2008, the majority of PM_{10} emissions in the Nogales NA came from fugitive dust from four source categories: Unpaved road dust, road construction, commercial/industrial/institutional construction, and paved road dust. The estimated emissions inventory for 2011 only differed slightly as total emissions decreased from 1,524 tons per year (tpy) in 2008 to 1,521 tpy in 2011, due primarily to implementation of new and cleaner engine standards for diesel engines. Little or no growth in population or economic activity occurred from 2008 to 2011. From 2008 to 2011, the emissions estimated for five of the top six source categories remain unchanged, except for residential wood burning which increased by two tons per year. Again, in 2011 as in 2008, these six source categories account for approximately 95 percent of all PM_{10} emissions in the Nogales NA.

TABLE 2—2008 AND 2011 NOGALES NA PM_{10} EMISSIONS INVENTORIES

[Tons per year]

Source category	2008	2011
Dust—Unpaved Road Dust	865	865
Dust—Road Construction	267	267
Dust—Commercial/Industrial/Institutional Construction	143	143
Dust—Paved Road Dust	121	121
Fuel Combustion—Residential—Wood	24	26
Dust—Residential Construction	24	24
Waste Disposal—Residential Garbage Burning	23	25
All other sources	57	50
Total	1,524	1,521

Note: All other sources include emissions from source categories such as all on-road mobile and off-road mobile, all commercial and industrial fuel combustion, agriculture, land clearing and burning activities.

Source: Table 5 in "PM_{10} Emission Inventories for 2008 and 2011, Nogales Non-Attainment Area, Santa Cruz County, Arizona," Appendix B of the Nogales 2012 Plan. Table 5 also provides a detailed listing of all source categories. Due to rounding, totals may not reflect exactly the sum of each source category.

3. Proposed Action on the Nogales Nonattainment Area 2008 and 2011 Emissions Inventories

We propose to find that the Nogales NA emissions inventories for 2008 and 2011 are comprehensive, accurate, and current inventories of actual emissions from all sources in the nonattainment area and that they meet the requirements of section 172(c)(3) of the CAA. The State has provided a 2008 base year and 2011 future year emissions inventory comprehensively addressing all source categories in the Nogales NA. The State also used the most recent iteration of mobile source emissions modeling tool, MOVES2010a, in developing its emissions inventories. Consequently, we are proposing to find that the emissions inventories provided by Arizona meet the requirements of section 172(c)(3) and provide an adequate basis for the attainment demonstration under section 179B, and the State's RACM/RACT and RFP demonstrations.

B. Section 179B Analysis and Demonstration of Attainment but for International Sources of PM_{10} Emissions

1. Review of Statute and Guidance Applied to the Nogales Section 179B Analysis and Demonstration of Attainment but for International Sources of PM_{10} Emissions

As discussed earlier, the General Preamble Addendum provides that "several types of information may be used to evaluate the impact of emissions emanating from outside the U.S." The EPA will consider the information "for individual nonattainment areas on a case-by-case basis in determining

[10] U.S. Census, Quickfacts, Santa Cruz County, Arizona.

[11] 2010 U.S. Census population estimates.

[12] Ibid.

[13] Arizona Department of Commerce Profile: Santa Cruz County Arizona, May 10, 2011, *http://www.azcommerce.com/doclib/commune/SantaCruzpercent20county.pdf.*

whether an area may qualify for treatment under section 179B.'' See 59 FR 42001; (August 16, 1994). The General Preamble Addendum suggests five methods that may be used to determine the impact of emissions emanating from outside the U.S. and explains that ''the State may use one or more of these types of information or other techniques, depending on their feasibility and applicability, to evaluate the impact of emissions emanating from outside the U.S. on the nonattainment area.'' See 59 FR 42001; (August 16, 1994). Below, we discuss these five methods for evaluating the effects from transport of international pollution and the applicability of these methods to the Nogales NA, as presented in the Nogales 2012 Plan.

Method 1. Place several ambient PM_{10} monitors and a meteorological station measuring wind speed and direction in the U.S. nonattainment area near the international border. Evaluate and quantify any changes in monitored PM_{10} concentrations with a change in the predominant wind direction.

The State reviewed the ambient PM_{10} data, meteorology, and topography in the Ambos Nogales area. Arizona maintains a monitor in Nogales, Mexico, as well as three monitors in Nogales, Arizona. The Nogales, Arizona monitors are divided as follows: Two monitors measure ambient PM_{10} levels; and one monitor measures ambient $PM_{2.5}$ levels.[14] Arizona also has two reference monitors at increasing distances from the Nogales NA. Arizona's complete analysis of the ambient data, meteorology, and topography is provided in Appendix D of the Nogales 2012 Plan and is discussed below in section IV.B.2.c of this proposal. This method provided useful information to understand emissions sources and PM_{10} concentrations in the Nogales NA.

Method 2. Comprehensively inventory PM_{10} emissions within the U.S. in the vicinity of the nonattainment area and demonstrate that those sources, after application of reasonably available controls, do not cause the NAAQS to be exceeded. This analysis must include an influx of background PM_{10} in the area. Background PM_{10} levels could be based on concentrations measured in a similar area not influenced by emissions from outside the U.S.

This method implies the use of an air quality model to demonstrate that emissions within the U.S. do not create a violation of the NAAQS. Although a comprehensive, area-wide inventory of PM_{10} emissions is available for Nogales, Arizona, information about the spatial and temporal distribution of those emissions required to support air quality modeling is not readily available and would require significant effort to develop. Furthermore, given the complex topography of the Ambos Nogales area, it is not feasible to develop an adequate demonstration using available modeling tools.

Method 3. Analyze ambient sample filters for specific types of particles emanating from across the border. Although not required, characteristics of emissions from foreign sources may be helpful so as to better demonstrate the causal relationship with and contribution to exceedances in the U.S. nonattainment area due to international emissions.

This method is unlikely to produce useful information for the Nogales NA because the large proportion of crustal PM sources on either side of the international border far outweigh any specific stationary or combustion-based PM source that could be identified by a filter-based analysis, and differentiating between Arizona and Mexican sources of crustal material is not feasible. Also, specific local and international point source emissions information, such as source-specific signature emissions compounds, was not available with which to correlate the filter analyses results.

Method 4. Inventory the sources on both sides of the border and compare the magnitude of PM_{10} emissions originating within the U.S. to those emanating from outside the U.S.

Arizona provided two emissions inventories: The first emissions inventory, discussed above, describes the PM_{10} sources and estimates PM_{10} emissions in and around the Nogales NA, Arizona; and, the second inventory describes the PM_{10} sources and estimates PM_{10} emissions in and around Nogales, Mexico. The Nogales NA PM_{10} emissions inventory is provided in Appendix B and the Nogales Municipality, Mexico emissions inventory is provided in Appendix C of the Nogales 2012 Plan. The results of both inventories are discussed below in section IV.B.2.b. of this proposal. Also, as a basis for these analyses, Arizona reviewed population estimates and relative population differences for these areas, which is further discussed in section IV.B.2.a. of this proposal.

Method 5. Perform air dispersion and/or receptor modeling to quantify the relative impacts on the nonattainment area of U.S. and foreign sources of PM_{10} emissions.

As discussed above, the information necessary to support air dispersion or receptor modeling is not readily available for the Nogales, Arizona area, nor is it available for the Nogales, Mexico area. For example, neither ADEQ, nor EPA, had available a gridded emissions inventory or a data set from an extensive monitoring array of ambient PM_{10} values and meteorological data derived from observations on multiple exceedance days.

Backward wind trajectory analysis using the HYSPLIT model was considered, based on Eta Data Assimilation System (EDAS) gridded meteorological data, but again, neither Arizona nor EPA pursued this analysis.[15] Previously, EPA performed such an analysis for the Nogales, Arizona area and found the resulting wind trajectories to be inconclusive. The EDAS has a 40-kilometer grid resolution; in contrast, the valley containing Nogales is 20 kilometers wide at its widest point. As a result, the EDAS data were not of a fine enough resolution to portray the south-to-north valley air drainage flows that are a key feature of local Nogales meteorology; consequently, further use of HYSPLIT model results for purposes of this section 179B analysis was rejected by the State and EPA.

To summarize, the State analyzed ambient PM_{10} levels in and around the Nogales NA, the local meteorology associated with exceedances of the PM_{10} standards, and sources of PM_{10} emissions on either side of the international border. These analyses are consistent with Methods 1 and 4 described by the General Preamble Addendum. The State examined method 3, but did not pursue this avenue of investigation because it was unlikely that definitive results could be produced given the large crustal source emissions on either side of the international border.

Initially, the State did not pursue Methods 2 and 5 because it did not have the data and the models required for this type of analysis. Instead, the State used the available information consistent with methods 1 and 4, to

[14] $PM_{2.5}$, also called fine particulate, refers to particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers. PM_{10} includes both $PM_{2.5}$ and the particulates with aerodynamic diameter between 2.5 and 10 micrometers, which is referred to as $PM_{10\text{-}2.5}$. This larger fraction is called ''coarse'' particulate. While fine particles originate mostly from combustion sources and secondary aerosol generation processes, coarse particles usually originate from mechanical activities and fugitive source categories.

[15] HYSPLIT is the ''Hybrid Single Particle Lagrangian Integrated Trajectory'' Model, developed and maintained by the National Oceanic and Atmospheric Administration; see *www.arl.noaa.gov/HYSPLIT_info.php* for more information.

demonstrate if the Nogales NA would have attained the standard, but for international emissions.

As stated in the General Preamble Addendum, EPA will consider the information ''for individual nonattainment areas on a case-by-case basis in determining whether an area may qualify for treatment under section 179B.'' See 59 FR 42001; (August 16, 1994). Because the individual circumstances surrounding a nonattainment area may differ widely whether by data, resources, or emissions sources, EPA anticipates that ''the State may use one or more of these types of information or other techniques, depending on their feasibility and applicability, to evaluate the impact of emissions emanating from outside the U.S. on the nonattainment area.'' See 59 FR 42001; (August 16, 1994). The analysis the State has provided for the Nogales NA is specific to this nonattainment area only and the timeframe, data, and circumstances therein, and EPA evaluated the analysis as such.

2. Review of Arizona's Section 179B Analysis and Demonstration of Attainment but for International Sources of PM_{10} Emissions

a. Population Growth in the Ambos Nogales Region

In producing emissions inventories, Arizona reviewed recent 2010 population information from the U.S. Census Bureau and Mexican Census data from the Instituto Nacional de Estadistica Geografia e Informatica (INEGI). While population estimates, by themselves, are not direct indicators of emissions activity, they provide an indication of relative human activity and resulting PM_{10} emissions on either side of the international border. Table 3 provides a comparison of the populations residing in the Nogales NA and the Nogales Municipality, Mexico. The Nogales NA population estimate includes persons residing in the city of Nogales, Arizona, and the surrounding community of Rio Rico within the Santa Cruz County portion of the nonattainment area.

TABLE 3—2010 POPULATION: NOGALES NA, ARIZONA AND NOGALES MUNICIPALITY, MEXICO

Area	Population	Percent
Nogales NA, Arizona	24,059	9.8
Nogales Municipality, Mexico	220,292	90.2
Total	244,351	100

Source: INEGI & U.S. Census.

Although the Nogales Municipality is a larger land area than the Nogales NA, a large proportion of the Municipality's population is concentrated within the city of Nogales, Mexico and the surrounding area. In sum, 90.2 percent of the 2010 population in the Ambos Nogales area can be attributed to the Mexican side of the international border.

It is also instructive to examine population change since 1995, when the Nogales NA met the PM_{10} NAAQS along with the subsequent observed exceedances of the PM_{10} NAAQS.[16] Table 4 shows population estimates for 1995, 2000, 2005, and 2010, while Table 5 shows the annual number of expected exceedances of the PM_{10} NAAQS since 1998, the first year the Nogales NA recorded exceedances after meeting the PM_{10} standard in 1994. The Nogales NA did not record exceedances of the PM_{10} standard from 1995 to 1997.

TABLE 4—NOGALES, ARIZONA AND NOGALES MUNICIPALITY, MEXICO POPULATIONS: 1995, 2000, 2005 AND 2010[17]

	1995	2000	2005	2010
Nogales, Arizona	20,184	20,878	20,421	20,837
Nogales Municipality, Mexico	133,491	159,787	193,517	220,292

Source: INEGI & U.S. Census.

Between 1995 and 2010, Nogales, Arizona population increased approximately three percent, and has fallen slightly since 2000. The 2010 Nogales NA population at 24,059 persons is marginally larger than the city of Nogales because the nonattainment area estimate includes portions of the Rio Rico communities in the northernmost portion of the nonattainment area. In contrast, the Nogales Municipality, Mexico population has increased 65 percent in the 1995 to 2010 timeframe. With the exceptions of 2000 and 2004, exceedances of the PM_{10} standard have been recorded since 1998 in the Nogales NA. The largest number of expected exceedances, 47.9, was recorded in 2006. See Table 5.

TABLE 5—NOGALES, ARIZONA EXPECTED EXCEEDANCES OF 24-HOUR PM_{10} NAAQS FROM 1998–2010

Monitor frequency	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
1 in 6 day	13.5	15.5	0.0	6.9	6.1	12.3	0.0	17.9	20.0	6.1	6.6	0.0	0.0
Continuous	.....	.....	.....	.....	.....	.....	.....	29.6	47.9	14.0	13.2	2.0	*8.5

*There were no quarters in 2010 where there was a complete data set per 40 CFR part 50, appendix K; see section IV.B.2.c. for a discussion of 2010 data.

Source for expected exceedance data: EPA Air Quality System Database.

[16] See 76 FR 1532; (January 11, 2011) for our determination that the Nogales NA attained the PM_{10} NAAQS by December 31, 1994.

[17] The 1995 Nogales, Arizona population estimate was interpolated from 1990 and 2000 U.S. Census figures; the 1990 population estimate was 19,489.

To summarize, population estimates since 1995 show the Nogales NA population remaining relatively constant while the Nogales Municipality, Mexico population has steadily increased to the present where 9 of 10 people in the Ambos Nogales area reside in Mexico. Over the same timeframe, after attaining the PM_{10} NAAQS in 1994 through 1997, expected exceedances of the PM_{10} NAAQS in the Nogales NA increased to a high of 47.9 in 2006 and the area does not meet the NAAQS today. The dramatic differential population increase in Nogales, Mexico compared to Nogales, Arizona and the surrounding nonattainment area supports the inference that a large and growing proportion of PM_{10} emissions in the Ambos Nogales area emanates from outside of the Nogales NA and the U.S.

b. Review and Comparison of U.S./Mexico Emissions Inventories

Both the Nogales NA and the Nogales Municipality, Mexico have similar contributing sources of PM_{10}, primarily fugitive dust from unpaved and paved roads, as well as combustion sources and construction. The Nogales NA emissions inventories were presented above in section IV.A.2 of this proposal. While less detailed than the Nogales NA emissions inventories, the Nogales Municipality, Mexico emissions inventories shows that the largest contributing sources of PM_{10} emissions are from unpaved and paved road dust followed by residential wood combustion and other area sources. Because Nogales Municipality, Mexico specific data could not be found to calculate unpaved and paved road emissions, the State reviewed other U.S./Mexico border emissions inventories to identify data for use in these calculations. Given the range of data generated and used by these U.S./Mexico border emissions inventories, low and high estimates were calculated for the unpaved and paved road source categories. Much of the difference between the low and high estimates of Nogales Municipality emissions is attributed to the low and high estimates of unpaved and paved road emissions. A high estimate for point sources was included because the State did not have readily available source-specific information providing a precise estimate for stationary point sources of PM_{10} in the Nogales Municipality, Mexico.[18] The methods for calculating these estimates are discussed in ''2008 and 2011 PM_{10} Emission Inventories, Nogales Municipality, Sonora, Mexico'' in Appendix C of the Nogales 2012 Plan. The Nogales Municipality, Mexico emissions inventories for 2008 and 2011 are presented in Table 6.

TABLE 6—PM_{10} EMISSIONS INVENTORIES FOR NOGALES MUNICIPALITY, MEXICO FOR 2008 AND 2011

[Tons per year]

Source category		Range	2008	2011
Point Sources		Low Estimate	1.1	1.1
		High Estimate	305	390
Area Sources	Unpaved Road	Low Estimate	2,144	2,308
		High Estimate	5,521	5,944
	Paved Road	Low Estimate	53	57
		High Estimate	646	696
	Agricultural Tilling		0.8	0.8
	Agricultural Burning		1.6	1.6
	Residential Wood Combustion		176	47
	Open Burning of Waste		55	56
	Construction Activities		23	24
	Remaining Area Sources		159	150
Mobile Sources			80	85
Nonroad Sources			20	27
Total		Low Estimate	2,713	2,757
Total		High Estimate	6,987	7,420

Emissions are rounded to the nearest ton/year, or to the nearest tenth of a ton/year for emissions less than 10 tons/year.
Source: Table 18 from ''2008 and 2011 p.m.10 Emission Inventories, Nogales Municipality, Sonora, Mexico'' in Appendix C of the Nogales 2012 Plan.

A review of the emissions inventory data by relative percentage and relative ratio provides two ways of considering the data. A comparison of 2008 and 2011 Nogales Municipality, Mexico low emission inventory estimates with the Nogales NA 2008 and 2011 emission inventory estimates shows a 36/64 percent split in total combined U.S./Mexico emissions inventories between emissions from the Nogales NA, Arizona and Nogales Municipality, Mexico areas, respectively. To characterize the relative difference by ratio using the low emissions estimate for the Nogales Municipality, Mexico, for every one ton of PM_{10} emissions produced annually in Nogales NA, there is an estimated 1.8 tons produced in Nogales Municipality. Similarly, a comparison of 2008 and 2011 Nogales Municipality high emission inventory estimates suggests that there is an 18/82 percent split in total combined U.S./Mexico emissions inventories between emissions from the Nogales NA, Arizona and Nogales Municipality, Mexico areas,

[18] Two methods were used to scale point source emissions from 1999 to 2008 and 2011 generating the high and low estimates for point source PM_{10}: For the low estimate, National point source emissions growth; and, for the high estimate, population based allocation ratio. The starting 1999 baseline for point source emission was 0.9 tpy and the high estimate, therefore, assumes an increase of three orders of magnitude compared to the low estimate. No point sources in the Nogales Municipality, Mexico have been identified as operating at a level of emissions consistent with the high estimate, but lacking source specific data to adjudicate the difference in estimates, the high estimate was reported as an upper bound. See Appendix C of the Nogales 2012 Plan for the Nogales Municipality Emissions Inventory for a complete discussion.

respectively. Again, to characterize the relative difference by ratio using the high emissions estimate for the Nogales Municipality, Mexico, for every one ton of PM_{10} emissions produced annually in Nogales NA, there is an estimated 4.6 tons produced in Nogales Municipality, Mexico.[19]

In summary, a comparison of the State's 2008 and 2011 emissions inventory data shows for every one ton of PM_{10} produced in the Nogales NA, there was between 1.8 and 4.6 tons of PM_{10} emissions produced annually in the Nogales Municipality, Mexico, depending on the choice of either the low or the high estimate of Nogales Municipality, Mexico emissions. The emission sources appear to be similar, with the majority of emissions from fugitive dust sources, such as reentrained unpaved and paved road dust.

c. Review and Analysis of Regional Meteorology, Topography and Ambient PM_{10} Monitoring Data

In its review of the ambient PM_{10} data, meteorological data, and through its analyses, Arizona found that the Ambos Nogales area's meteorology and topography influence the observed exceedances of PM_{10} NAAQS and there is a definite south-to-north directional component to the ambient air quality data underlying the exceedances of the PM_{10} NAAQS. Over the 2007–2009 timeframe, there were 29 exceedances at the Nogales, Arizona Post Office (Model: Met One BAM 1020) monitor.[20]

(i) Ambos Nogales Regional Meteorology and Topography

The State's analysis of ambient concentration and meteorological data identified 26 of the 29 exceedances as having nearly identical diurnal patterns; the three exceptions were January 1, 2007, May 22, 2008, and January 1, 2009.[21] For each of the 26 days, there is a strong pattern of decreasing PM_{10} concentrations in the early morning. Generally, the wind speeds are low and variable overnight and wind direction starts southerly but becomes increasingly variable into the daylight morning hours. The majority of days have a pronounced PM_{10} increase and drop-off between 6:00 a.m. and 9:00 a.m., suggesting a reproducible direct PM_{10} source, noting the times correspond to a morning commute pattern. The PM_{10} concentrations reach their lowest points between 10:00 a.m. and 4:00 p.m., with corresponding increases in ambient temperature and wind speed observed during those times. Usually, northerly winds accompany these increases in temperature and wind speed. As temperatures and wind speeds drop in the evening hours, a pronounced spike in PM_{10} concentration is then observed beginning between 4:00 p.m. and 6:00 p.m., with concentrations remaining high for several hours and gradually dropping off towards midnight. The afternoon spike in PM_{10} concentrations correlates with a significant drop in temperature and wind speed, and generally a shift to low and variable southerly (from the south) winds.

Looking at the topography from south to north, the highest elevation of a primary roadway transect is at 4,331 feet above sea level at the southern edge of Nogales, Mexico, falling to the international border at 3,933 feet, continuing to the northern edge of the Nogales NA at 3,425 feet, and elevation continues to fall along the Santa Cruz River watershed to the north to approximately 3,100 feet.[22] Across this largest 48.5-mile local transect, the elevation falls approximately 1,200 feet from south to north, i.e., from Nogales, Mexico, through the Nogales NA, and to the north towards Tucson, Arizona.

In examining a smaller 14.8-mile transect along a similar primary roadway route, the State found that elevation declines on a south-to-north axis across two sub-transects centering on the international border. The Nogales, Mexico sub-transect shows an elevation drop of 201 feet over 4.8 miles to the international border where there is a slight leveling; starting at 4,134 feet above sea level at the Nogales, Mexico urban boundary and dropping to 3,933 feet at the international border. The Nogales, Arizona sub-transect shows an elevation drop of 508 feet over 10 miles, from the international border to the northern boundary of the Nogales NA; starting at 3,933 feet and dropping to 3,425 feet.[23] In sum, looking at a south-to-north transect along the Nogales Wash, elevations fall from south to north with the highest elevations occurring in the Nogales, Mexico area. Looking at the general topography of the Ambos Nogales area from a northwest perspective in Arizona to the southeast into Mexico, there is a funnel created as the Nogales Wash falls from higher southern elevations to the international border along the route of the Alvaro Obregón Boulevard and into Nogales, Arizona.[24] Small side canyons extend off of the Nogales Wash bottom and into the surrounding hills between the international border and south of the Nogales, Mexico city center, and to a lesser extent into Nogales, Arizona as elevations drop moving to the north.

(ii) Ambient PM_{10} Monitoring Network, Data, Analyses, and Findings

As suggested by method 1 from the General Preamble Addendum, the State analyzed hourly observations of PM_{10} concentrations, wind direction, wind speed and temperature.[25] First, we will provide an overview and review of the Nogales, Arizona monitoring network. Second, we will examine the State's review of the ambient PM_{10} data for 2007–2009. Finally, we will review the findings from the State's analyses of the ambient PM_{10} and meteorological data.

Ambient PM_{10} and Meteorological Monitoring Network. There are five ambient air monitors in the vicinity of Ambos Nogales that the State considered for this analysis.[26] Within the nonattainment area, the Nogales, Arizona Post Office is the primary violating monitor location for PM_{10}. Arizona operates two PM_{10} monitors there, along with a $PM_{2.5}$ monitor. The Nogales, Arizona Post Office monitoring site is 0.3 miles north of the border and this monitoring site is 0.9 miles northeast of the Nogales, Mexico Fire

[19] See Tables 6–9 from ''Clean Air Act, Section 179B Attainment Determination for the Nogales, Arizona PM_{10} Nonattainment Area'' in Appendix A of the Nogales 2012 Plan for the presentation of the data underlying this relative percentage and relative ratio presentation.

[20] For a listing of the 29 exceedance days by year and observed 24-hour concentrations, see Tables 1–3 in ''Analysis of Ambient PM_{10} Levels, Topography, and Meteorological Data in Nogales, Arizona: 2007–2009'' in Appendix D of the Nogales 2012 Plan.

[21] See, in particular, Section 3 of ''Analysis of Ambient PM_{10} Levels, Topography, and Meteorological Data in Nogales, Arizona: 2007–2009'', in Appendix D of the Nogales 2012 Plan.

[22] See Figure 18, Long Aerial and Elevation Transect of Nogales Arizona and Nogales, Sonora, in ''Analysis of Ambient PM_{10} Levels, Topography, and Meteorological Data in Nogales, Arizona: 2007–2009'', in Appendix D of the Nogales 2012 Plan.

[23] See Figure 19, Short Aerial and Elevation Transect of Nogales, Arizona and Nogales, Sonora, from ''Analysis of Ambient PM_{10} Levels, Topography, and Meteorological Data in Nogales, Arizona: 2007–2009'', in Appendix D of the Nogales 2012 Plan.

[24] See Figure 17, Elevated Topographical View of Ambos Nogales Area from Northwest Perspective with Nogales, Sonora Highlighted and International Border in Red Line, from ''Analysis of Ambient PM_{10} Levels, Topography, and Meteorological Data in Nogales, Arizona: 2007–2009'', in Appendix D of the Nogales 2012 Plan.

[25] Observations of PM_{10} concentrations, wind direction, wind speed and temperature were taken at the Nogales, Arizona Post Office site; hourly temperature observations were taken at the Nogales International Airport, 7.6 miles from the Nogales Post Office monitoring site and within the Nogales NA.

[26] These monitors are described in detail in Section 2 of ''Analysis of Ambient PM_{10} Levels, Topography, and Meteorological Data in Nogales, Arizona: 2007–2009'', in Appendix D of the Nogales 2012 Plan. Also, see Figure 2 of the same document for a map of their locations.

Station monitoring site. The Green Valley and Corona de Tucson monitoring sites are approximately 35 and 45 miles away from the U.S./Mexico border, respectively. The Nogales Post Office and the Nogales, Mexico Fire Station monitors are operated by ADEQ. The Corona de Tucson and the Green Valley monitors, located near Tucson, Arizona, are operated by the Pima County Department of Environmental Quality (PDEQ).

Also, Arizona operates a meteorological data collection station at the Nogales, Arizona Post Office monitoring site. Wind speed observations discussed in its analyses were collected at that location. Temperature observations were collected at the Nogales International Airport, located approximately six miles northeast of the Nogales, Arizona Post Office monitoring site and within the nonattainment area.

EPA performed independent Technical System Audits (TSAs) of ADEQ's ambient air monitoring program in December 2004, September 2009, and April 2012 and TSAs of PDEQ's ambient monitoring program in June 2008 and September 2011, per requirements in 40 CFR part 58, appendix A, section 2.5.[27] We assessed ADEQ and PDEQ's compliance with established regulations governing the collection, analysis, validation, and reporting of ambient air quality data and concluded that ADEQ and PDEQ have a robust ambient air monitoring program, with an appropriate quality system in place for collecting ambient air monitoring data. EPA reviewed and subsequently approved the 2011 ADEQ annual monitoring network plan on December 1, 2011.[28] We found that ADEQ's 2011 monitoring network plan was complete and met the requirements for annual network plans described in 40 CFR 58.10.

Ambient PM_{10} Data for 2007–2009. The 24-hour PM_{10} NAAQS is based on the number of expected exceedances greater than 150 μg/m³ averaged over three years.[29] For this analysis, the State considered the most recent and most complete three-year data range available: 2007–2009. There was a large period of missing data at the Nogales, Arizona Post Office PM_{10} federal equivalency method (FEM)/special purpose monitor between March 16 and October 27, 2010. Consequently, we concur with the State that 2007 to 2009 is the most appropriate timeframe for this section 179B analysis and attainment demonstration. At the Nogales, Arizona Post Office monitors, PM_{10} data completeness for each quarter within the 2007–2009 timeframe is greater than 75 percent.

In the 2007–2009 period, there were 29 exceedances at the Nogales, Arizona Post Office, FEM/special purpose monitor.[30] [31] Of those exceedances, 14 occurred in 2007, 13 in 2008, and two in 2009. Twenty-seven of the twenty-nine exceedances were observed in the October through March annual timeframe. Twenty-four hour PM_{10} concentrations on exceedance days varied between 155 and 238 μg/m³, with some hourly measurements reaching 900 μg/m³. Arizona has not flagged any of these 2007, 2008, or 2009 exceedance days for potential exclusion from air quality planning considerations under EPA's Exceptional Events Rule.[32] The State focused on the data from the Nogales, Arizona Post Office FEM/Met One BAM 1020 monitor for the following reasons: it is comparable to the NAAQS; it has recorded all the exceedances in the area; it has recorded hourly ambient values; and, it has a sufficiently complete dataset for comparison to the NAAQS.

The State did not use 2010 and 2011 data for its detailed meteorological analysis and attainment demonstration for two reasons. First, the 2010 dataset did not meet the completeness criteria specified in 40 CFR part 50, appendix K; no quarter in 2010 had complete data. This was due to a large data gap from March 16 to October 27 resulting from poor quality assurance and control results. Second, at the time of this analysis, the 2011 dataset had yet to be entered completely into the EPA's Air Quality System (AQS) database and certified by Arizona. As stated earlier, a complete year of air quality data, as defined by 40 CFR part 50, appendix K, comprises all four calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days. While the 2010 and 2011 ambient data do not provide the basis for the State's attainment demonstration, the State examined this data and found no information to contradict its conclusions using the 2007–2009 data set.[33]

The State reviewed the 2010 and 2011 data to see how ambient PM_{10} levels compared to the 2007–2009 dataset. In 2010, the Nogales, Arizona Post Office (FRM/Met One BAM 1020) monitor recorded six exceedances of the 24-hour PM_{10} NAAQS; these 24-hour average ambient values ranged from 159 μg/m³ to 191 μg/m³. There was one exceedance of the PM_{10} standard in 2011. Arizona has not flagged any of these 2010 or 2011 exceedances for potential exclusion from air quality planning considerations under EPA's Exceptional Events Rule.

Analyses of 2007–2009 Ambient PM_{10} Data, Meteorological Data and Findings. To understand and characterize the ambient PM_{10} data and meteorological data from the Nogales NA on the 29 exceedance days chosen for this analysis, the State conducted two initial studies: an examination of hourly ambient PM_{10} concentrations, hourly wind speed observations, and hourly temperatures; and, several analyses of hourly wind direction observations and hourly ambient PM_{10} concentrations.

The first study of hourly observations of ambient PM_{10} concentrations, wind speeds, and temperatures on the 29 exceedance days involved line plots of these three variables over the 24 hour exceedance day.[34] These line plots showed a relatively tight grouping among the three subject variables across 29 exceedance days except for three days that were distinct from the rest. The line plot of hourly PM_{10} concentrations versus time of day for all exceedance days identified January 1, 2007, May 22, 2008, and January 1, 2009 as having a significantly different diurnal pattern.[35] The remaining 26 of

[27] See EPA's ''Arizona Department of Environmental Quality Technical System Audit'' final October 2005; ''Technical System Audit Report, Arizona Department of Environmental Quality, Air Quality Division, Ambient Air Quality Monitoring Program,'' final September 2010; and ''Pima County Department of Environmental Quality, Technical System Audit'' final February 2009. Final reports for the April 2012 TSA of ADEQ and September 2011 TSA of PDEQ are not yet complete.

[28] See ADEQ's ''State of Arizona Air Monitoring Network Plan For the Year 2011, Final Report'' dated August 2, 2011 and EPA's approval letter from Matthew Lakin, Manager of EPA Region 9's Air Quality Analysis Office, to Eric Massey, Director of the Air Quality Division of Arizona Department of Environmental Quality, dated December 1, 2011.

[29] The NAAQS for all pollutants can be found at *www.epa.gov/air/criteria.html.*

[30] This monitor is formally designated as AQS ID: 04–023–0004, POC 3.

[31] For a list of the 29 exceedance days by year and observed 24-hour concentrations at all five Nogales area monitors, see Tables 1–3 in ''Analysis of Ambient PM_{10} Levels, Topography, and Meteorological Data in Nogales, Arizona: 2007–2009'' in Appendix D of the Nogales 2012 Plan.

[32] For the Exceptional Events Rule see ''Treatment of air quality monitoring data influenced by exceptional events''; 40 CFR 50.14.

[33] See Section 4.5 in ''Analysis of Ambient PM_{10} Levels, Topography, and Meteorological Data in Nogales, Arizona: 2007–2009'', in Appendix D of the Nogales 2012 Plan.

[34] See Figures 4, 5, 6, and 7 in ''Analysis of Ambient PM_{10} Levels, Topography, and Meteorological Data in Nogales, Arizona: 2007–2009'', in Appendix D of the Nogales 2012 Plan.

[35] See Figure 4 in ''Analysis of Ambient PM_{10} Levels, Topography, and Meteorological Data in

the 29 observed exceedances have nearly identical diurnal patterns.[36] Line plots of hourly wind speed versus time of day for all exceedance days show wind speeds were eight miles per hour (mph) or below for all exceedance days, with the exception of May 22, 2008, when elevated wind speeds were observed.[37] Line plots of hourly temperatures versus time of day for all exceedance days show a distinct diurnal heating and cooling pattern with no particular day deviating substantially from the others.[38]

In a second set of analyses of ambient PM_{10} concentrations and wind direction on exceedance days, the State found that high PM_{10} concentrations are associated with wind direction from a southerly quadrant, or southerly air flows, more often than what is typically observed on non-exceedance days. Also, the State found that the largest number of hourly ambient values above 150 μg/m³ and the highest ambient values, including those markedly above 150 μg/m³, originated from a southerly wind direction quadrant.[39] These observations suggest a greater influence on ambient PM_{10} concentrations from sources in Mexico during these hours of southerly wind direction.

Beginning with wind rose analyses, the State determined that the prevailing wind direction was from the south, and to a lesser degree, from the west southwest directions on non-exceedance days, but almost primarily from the south on exceedance days.[40] Following with pollution rose studies that link hourly ambient PM_{10} concentration and wind direction observations, these studies showed a significant percentage of values greater than 150 μg/m³ originating from the southerly wind direction quadrant.[41] A presentation of the Figure 11 pollution rose data in tabular form is provided in Table 7. The largest proportion of hourly values above 150 μg/m³ and the highest hourly concentrations were found in the southerly wind direction quadrant. When ambient PM_{10} values above 150 μg/m³ were sorted by 100 μg/m³ increments to 550 μg/m³ and greater, the analysis showed that within each increment above 150 μg/m³, 71 to 92 percent of the ambient PM_{10} observations were from the southerly wind quadrant. Again, these observations suggest a greater influence on ambient PM_{10} concentrations from sources in Mexico during these hours of southerly wind direction.

TABLE 7—HOURLY AMBIENT PM_{10} CONCENTRATIONS SORTED BY CONCENTRATION AND WIND DIRECTION, 2007–2009 EXCEEDANCE DAYS

Wind direction quadrant	Range of ambient concentration values (microgram/m³)						
	<150 (percent)	150–250 (percent)	250–350 (percent)	350–450 (percent)	450–550 (percent)	>=550 (percent)	Share of all wind direction observations
Northerly NW to NNE	27	6	3	3	3	0	17
Easterly NE to ESE	15	16	16	11	3	8	14
Southerly SE to WSW	41	71	72	84	92	92	57
Westerly SW to WNW	18	6	8	3	3	0	12
Total	100	100	100	100	100	100	100

Source: Table 11 in ''Clean Air Act, Section 179B Attainment Determination for the Nogales PM_{10} Nonattainment Area'' in Appendix A of the Nogales 2012 Plan.

Finally, in a third analysis, the State examined the wind direction and hourly PM_{10} concentrations on each exceedance day to determine two average ambient values for each exceedance day: one value for the southerly wind quadrant and a second value representing all other wind direction quadrants.[42] The results showed that two of the 29 exceedance days, January 1, 2007 and January 26, 2008, have an average ambient concentration greater than 150 μg/m³ for the ''all other wind direction'' quadrants. The ratio of the southerly quadrant concentration to the ''all other direction'' quadrant concentration ranges from 0.86 to one to 11 to one, with an average ratio value of 3.83 to one. Only one day, January 1, 2007, has a ratio value less than 1.0 to one; i.e., the ''all other direction'' quadrants' share exceeds the southerly quadrant share. This analysis also suggests a greater influence on ambient PM_{10} concentrations from sources in Mexico during these hours of southerly wind direction.

To summarize, the State analyzed hourly ambient concentrations on exceedance days and found that high PM_{10} concentrations are associated with wind direction from a southerly quadrant, or southerly air flows, more often than what is typically observed on non-exceedance days. The State found that the largest number of hourly ambient values above 150 μg/m³ and the highest ambient values, including those markedly above 150 μg/m³, originated from a southerly wind direction quadrant. These studies of hourly ambient data confirm these general findings; however, the January 1, 2007 and January 26, 2008 exceedance days may be exceptions. Also, due to the differing meteorology exhibited on May 22, 2008 and January 1, 2009, these days are marked for further study. All four of these exceedance days are reviewed and discussed further, below.

Nogales, Arizona: 2007–2009'', in Appendix D of the Nogales 2012 Plan.

[36] See Figure 5 in ''Analysis of Ambient PM_{10} Levels, Topography, and Meteorological Data in Nogales, Arizona: 2007–2009'', in Appendix D of the Nogales 2012 Plan.

[37] See Figure 6 in ''Analysis of Ambient PM_{10} Levels, Topography, and Meteorological Data in Nogales, Arizona: 2007–2009'', in Appendix D of the Nogales 2012 Plan.

[38] See Figure 7 in ''Analysis of Ambient PM_{10} Levels, Topography, and Meteorological Data in Nogales, Arizona: 2007–2009'', in Appendix D of the Nogales 2012 Plan.

[39] Throughout these analyses and this document, the term ''southerly wind direction quadrant'' refers to wind originating from between 135 and 224 degrees on a compass rose. Similarly, the term ''all other wind direction quadrants'' refers to the remaining 270 degrees of wind direction between 225 and 134 degrees on a compass rose.

[40] See Figures 8 and 9 in ''Analysis of Ambient PM_{10} Levels, Topography, and Meteorological Data in Nogales, Arizona: 2007–2009'', in Appendix D of the Nogales 2012 Plan.

[41] See Figures 11 and 12 in ''Analysis of Ambient PM_{10} Levels, Topography, and Meteorological Data in Nogales, Arizona: 2007–2009'', in Appendix D of the Nogales 2012 Plan.

[42] See Table 12 for all estimated values on all exceedance days in ''Clean Air Act, Section 179B Attainment Determination for the Nogales PM_{10} Nonattainment Area'' in Appendix A of the Nogales 2012 Plan.

d. Findings From Reviews of Emission Inventories, and Studies of Ambient PM_{10} Data, and Meteorological Data

From the State's analyses, the Nogales NA emissions inventories, the Nogales Municipality, Mexico emissions inventories, and the 2007–2009 ambient data and meteorological analyses, the State made the findings listed below.

- The majority of exceedances, 79 percent, occurred in the October to January timeframe, mostly in November.[43] Also, given the high desert environment and winter light regime, temperatures usually drop dramatically, 20 degrees Fahrenheit over the 3–4 hours after sunset.[44]
- From the Nogales NA and Nogales Municipality, Mexico emission inventories, the State estimated pollution loads may differ by a ratio of 1.8 (low estimate)—4.6 (high estimate) to one on a south-to-north basis in relation to the international border.
- The largest sources of PM_{10} emissions in the Ambos Nogales area are reentrained dust from unpaved and paved roads.
- Overall, elevations drop approximately 709 feet across the entire south-to-north local transect, from the southernmost edge of the Nogales, Mexico urban boundary to the Nogales NA northern boundary line.
- Of the 29 exceedance days in 2007–2009, 26 of those days showed a similar pattern of ambient PM_{10} concentrations, wind speeds, wind direction, and temperature variation over a 24-hour period; the three exceptions were January 1, 2007, May 22, 2008, and January 1, 2009.
- On exceedance days, the largest proportions, 71–92 percent, of hourly values exceeding 150 μg/m^3 and almost all of the highest observed PM_{10} concentrations of observations above 450 μg/m^3, 92 percent, are associated with a southerly wind direction quadrant.[45]
- The ambient PM_{10} concentration attributed to the southerly wind quadrant exceeds 150 μg/m^3 on all 29 exceedance days. In contrast, two exceedance days from the ''all other wind direction'' quadrants show a value greater than 150 μg/m^3: January 1, 2007, and January 26, 2008.
- Only one of 29 exceedance days shows the concentration attributed to the ''all other wind direction'' quadrants greater than that of the concentration attributed to the southerly wind quadrant: January 1, 2007.
- On exceedance days, the average ratio of the southerly wind quadrant share of 24-hour ambient PM_{10} values to all other wind quadrants share of ambient values is 3.83 to one. This ratio is relatively consistent with the estimated pollution loads ratio of 1.8–4.6 to one, from south-to-north across the international border. This comparison of the hourly ambient PM_{10} value/wind direction ratio and the pollution load ratios suggests that the pollution load ratios and the low and high emissions inventory estimates are both conservatively low and high estimates of ambient conditions.

Upon review of the ambient PM_{10} data, meteorology, and the State's analyses, we concur with the State's findings listed above.

e. Arizona's Demonstration of Attainment for the Nogales Nonattainment Area but for International Sources of PM_{10} Emissions

(i) Daily Analysis to Demonstrate Attainment but for International Sources of PM_{10} Emissions

As described above, 26 of the 29 2007–2009 exceedances showed a similar pattern of ambient PM_{10} concentrations, wind speeds, wind direction, and temperature variation over a 24-hour period; the exceptions were January 1, 2007, May 22, 2008, and January 1, 2009. Two of these days, January 1, 2007, and January 1, 2009, with higher early morning PM_{10} concentrations, only vary from the diurnal profile of PM_{10} concentrations observed for the other exceedances, but have similar meteorological and concentration patterns throughout the rest of the day. Two of the 29 exceedance days, January 1, 2007, and January 26, 2008, had high average ambient concentrations during hours when the wind was out of directions other than the south. Thus, there are 25 exceedance days that are equivalent and can be considered as a group, setting aside the dissimilar exceedance days listed above, January 1, 2007, January 26, 2008, May 22, 2008, and January 1, 2009.

A Conceptual Model of 2007–2009 Exceedance Days. Considering these 25 similar exceedance days, the State explained how the elements of pollution loads and sources, temperature changes, and wind direction may contribute to producing the majority of observed ambient PM_{10} values exceeding the NAAQS in Nogales, Arizona.[46] The data concerning January 1, 2007, January 26, 2008, May 22, 2008, and January 1, 2009 are reviewed later in more detail in this daily analysis.

Within the cited Figure 3, the State shows the average PM_{10} concentration, wind speed, and temperature across 26 similar exceedance days and including 25 of those days in the conceptual model. The 24-hour pattern of these variables on these 25 days is similar. Beginning at midnight, the data indicate that there is a strong pattern of decreasing PM_{10} concentrations from the previous day's high values into the early morning hours. Then, there is a pronounced PM_{10} increase and drop-off between 6:00 a.m. and 9:00 a.m., suggesting a regularly occurring direct PM_{10} source, such as reentrained road dust from the morning commute. As morning temperatures rise, so does wind speed as wind direction changes from south to north dispersing the spike in morning PM_{10} concentrations. The PM_{10} concentrations continue to fall through the afternoon and reach their lowest points between 10:00 a.m. and 4:00 p.m. The morning and afternoon increases in ambient temperature and wind speed can be attributed to the heating portion of a diurnal heating and cooling cycle where heated air flows from lower elevations in the north to the higher elevations in the south.

On the 25 days, the meteorological and ambient concentration data also provide an explanation for regularly occurring increases in PM_{10} concentrations during the evening hours. As sunset approaches and night falls, the diurnal cooling cycle begins. Ambient temperatures drop and lower elevation air masses no longer rise with convection, causing wind speed to drop and wind direction to be variable. As temperatures continue to drop after sunset, wind speeds drop and cold air masses flow downslope from higher elevations, causing wind direction to shift from a variable/northerly direction to a southerly direction. A pronounced spike in PM_{10} concentration is then

[43] See Figure 3 in ''Analysis of Ambient PM_{10} Levels, Topography, and Meteorological Data in Nogales, Arizona: 2007–2009'' in Appendix D of the Nogales 2012 Plan.

[44] See Figures 7 and 14 in ''Analysis of Ambient PM_{10} Levels, Topography, and Meteorological Data in Nogales, Arizona: 2007–2009'' in Appendix D of the Nogales 2012 Plan.

[45] See Table 11 above. For a visual representation of this data, see the pollution roses in Figures 11 and 12, ''Analysis of Ambient PM_{10} Levels, Topography, and Meteorological Data in Nogales, Arizona: 2007–2009'' in Appendix D of the Nogales 2012 Plan.

[46] For a graphical depiction of the interplay between ambient PM_{10} concentrations, wind speed, and temperatures described by the conceptual model, see Figure 3 in ''Clean Air Act, Section 179B Attainment Determination for the Nogales PM_{10} Nonattainment Area'' in Appendix A of the Nogales 2012 Plan. As explained in the footnote to Figure 3, although the diurnal emissions pattern of the January 26, 2008 exceedance day is very similar to the 25 exceedance days summarized by the conceptual model other parts of the discussion may not be consistent with the observed data from January 26, 2008.

observed beginning between 4:00 p.m. and 6:00 p.m.; roughly corresponding with the evening commute hours. Concentrations remain high for several hours into the evening and gradually begin to decrease as midnight approaches. The highest concentrations of PM_{10} occur in these evening hours when reentrained dust from unpaved and paved roads may be captured by cold air flows moving south to north from higher to lower elevations (later in the discussion this phenomenon is referred to as ''downslope air flows''). Also, home heating combustion may add a component to the evening PM_{10} load and also be captured in the evening southerly and downslope air flows from Nogales, Mexico into Nogales, Arizona.

This pattern of exceedances is usually observed during times when the general weather pattern allows for stagnation and a relatively still air mass subject to movement by the diurnal cooling and heating cycle. At other times of the year, frontal systems move through often enough and with enough energy to prevent a stagnant air mass in the Ambos Nogales region and this diurnal heating and cooling cycle exerts less influence on the local meteorology.

The conceptual model the State has presented to explain the exceedances in the Nogales NA is consistent with the study by Arizona State University, ''Atmospheric, Hydroclimatic, and Anthropogenic Causes of Fugitive Dust in the Nogales, Arizona-Nogales, Sonora Airshed.''[47] In this study—based on a regression analysis of 815 daily PM_{10} observations at Nogales, Arizona, and 457 daily PM_{10} observations at Nogales, Mexico, and other information—the authors conclude that stagnant atmospheric conditions over a large scale (i.e., a stagnant synoptic atmosphere) is the most important factor in predicting high daily PM_{10} concentrations.

For the 25 similar days examined by ADEQ, the ambient PM_{10} concentration attributed to the southerly wind direction quadrant always exceeds the 150 $\mu g/m^3$ level, in most cases markedly.[48] Conversely, the ambient concentration attributed to the ''all other wind direction'' quadrants never exceeds the 150 $\mu g/m^3$ level. Across all 25 days, the average of the hourly monitored PM_{10} concentration values for the hours with a southerly wind direction ranges from 163 to 369 $\mu g/m^3$ for each of the days, with an average value across the 25 days of 264 $\mu g/m^3$. In comparison, the average of the hourly concentration values for all other wind direction quadrants ranges from 38 to 148 $\mu g/m^3$ for each of the days, with an average value across the 25 days of 80 $\mu g/m^3$. This suggests that emissions sources to the south in Mexico are contributing significantly to those hourly ambient concentrations and the resulting 24-hour average concentrations.

In sum, for 25 of the 29 exceedance days, the State provided a conceptual model explaining how exceedances of the PM_{10} NAAQS occur in the Nogales NA. Moreover, for all of these 25 days, the origin and contribution of PM_{10} to exceedances of the standard at the Nogales, Arizona Post Office monitor has a very large southerly component. Given the wind direction, the proximity of the monitor to the border, and the comparison of the magnitude of emissions on either side of the border, the majority of the emissions that result in these 25 exceedances most likely originate from the Nogales, Mexico side of the international border.

Analysis of Four Days Differing From Conceptual Model: January 1, 2007; January 26, 2008; May 22, 2008; and, January 1, 2009. The conceptual model of Mexican influence on Nogales NA PM_{10} concentrations described above fits the observations on 25 of the 29 exceedance days in 2007–2009. The State identified four specific exceedance days that differ in one or more ways from the 25-day conceptual model of PM_{10} exceedances in the Nogales NA: January 1, 2007, May 22, 2008, January 26, 2008, and January 1, 2009. See Table 8 for more information.

TABLE 8—24-HOUR PM_{10} CONCENTRATION ($\mu G/M^3$) AND HOURLY CONCENTRATION AVERAGES ($\mu G/M^3$) DISAGGREGATED BY SOUTHERLY WIND DIRECTION QUADRANT FOR EXCEEDANCE DAYS DIFFERING FROM CONCEPTUAL MODEL

Date	24-hour concentration	Southerly wind quadrant (135 to 224 degrees) average concentration	All other wind direction (225 to 134 degrees) average concentration
January 1, 2007	210	199 (15 of 24 values)	231 (9 of 24 values).
January 26, 2008	204	257 (7 of 24 values)	182 (17 of 24 values).
May 22, 2008	217	217 (24 of 24 values)	No Observed Values.
January 1, 2009	238	323 (14 of 24 values)	119 (10 of 24 values).

Data Source: Air Quality System database; and, Table 4.2 in Nogales 2012 Plan.

The State examined each of these days in further detail to evaluate the influences on the high ambient PM_{10} values that occurred on those days and to determine whether the four remaining exceedance days—January 1, 2007, January 26, 2008, May 22, 2008, and January 1, 2009—should be assigned to the category of exceedance days having a significant contribution from emission sources originating from the Nogales, Mexico side of the international border. The State's analysis is summarized below.

January 1, 2007 Exceedance Day Review. Considering the January 1, 2007 exceedance day, it differs from the conceptual model average exceedance day in the timing and distribution of observed ambient PM_{10} values and high $PM_{2.5}$ component most likely caused by a combustion source.[49] The PM_{10}: $PM_{2.5}$ ratio for January 1, 2007 is the lowest in the 29-day sample (1.49 to 1). What differs in the case of the January 1, 2007 exceedance is that the 270 degree wind direction quadrants contain enough high values to contribute disproportionately to the overall 24-hour average concentration. Although more detailed and different field studies might prove otherwise, with the information available, the State's analysis is inconclusive as to whether this exceedance is attributable to a disproportionate international

[47] Completed in 2002 by A.W. Ellis, the final report is available through The Southwest Center for Environmental Research and Policy at *http://scerpfiles.org/cont_mgt/doc_files/A-02-2.pdf.*

[48] For the estimated values providing the basis for the conceptual model's 25 exceedance day values discussed in this paragraph, see Table 12 in ''Clean Air Act, Section 179B Attainment Determination for the Nogales PM_{10} Nonattainment Area'' in Appendix A of the Nogales 2012 Plan.

[49] For the complete discussion of coarse versus fine particulate matter on all exceedance days, see Section 4.4 and Table 8 in ''Analysis of Ambient PM_{10} Levels, Topography, and Meteorological Data in Nogales, Arizona: 2007–2009'' in Appendix D of the Nogales 2012 Plan.

contribution and the Nogales NA would not have exceeded the 24-hour PM_{10} standard but for Mexican emissions.[50]

January 26, 2008 Exceedance Day Review. The State's review of the January 26, 2008 exceedance day suggests that this day is most like the conceptual model average exceedance day in the timing and distribution of observed ambient PM_{10} values. While the southerly wind direction quadrant contains enough high values to contribute disproportionately to the overall 24-hour average concentration, there are enough remaining high values in the 17 of 24 hourly observations from the 270 degree wind direction quadrants to be above the 150 $\mu g/m^3$ level. Again, while specifically designed field studies might help clarify the relative contributions to this exceedance, with the information available, the State's analysis is inconclusive as to whether this exceedance is attributable to a disproportionate international contribution and the Nogales NA would not have exceeded the 24-hour PM_{10} standard but for Mexican emissions.[51]

May 22, 2008 Exceedance Day Review. The May 22, 2008 exceedance day is wholly different from the State's conceptual model exceedance day given the relative high wind speeds, a 17 mph high observation, and higher than usual coarse PM component likely from disturbed surfaces.[52] The PM_{10}:$PM_{2.5}$ ratio for May 22, 2008 is the highest in the 29-day sample (10.96 to 1), well beyond the sample average of 6.24 to 1. As with total PM_{10} emissions, emissions of coarse PM (e.g., unpaved roads) are higher from Nogales, Mexico, than they are from the Nogales NA. The wind direction is from a southerly quadrant in all hourly observations. See Table 8. Given this information, we concur that the day should be placed with the 25 other exceedance days in the conceptual model, because it is likely that the sources of PM_{10} causing the exceedance originated from the Nogales, Mexico side of the international border.[53]

January 1, 2009 Exceedance Day Review. Like the January 1, 2007 exceedance, the January 1, 2009 exceedance day is different from the conceptual model exceedance day in the timing and distribution of observed ambient PM_{10} values and high $PM_{2.5}$ component most likely caused by a combustion source. As with total PM_{10} emissions, emissions of fine PM (e.g., combustion sources) are higher from Nogales, Mexico, than they are from the Nogales NA. For example, a comparison of the 2008 Nogales Municipality, Mexico and Nogales NA emissions inventories for the residential woodburning source category shows 176 tpy compared to 24 tpy, respectively (see Tables 2 and 6, above). The key factor for assigning this day is the contribution of high hourly ambient concentrations with a southerly wind direction quadrant compared to the remaining 270 degree wind direction quadrants. See Table 8. Consequently, we concur that the day should be placed with the 25 other exceedance days in the conceptual model, because it is likely that the sources of PM_{10} causing the exceedance originated from the Nogales, Mexico side of the international border.[54]

To summarize, the State concludes that two exceedance days, May 22, 2008 and January 1, 2009, should be categorized with the 25 exceedance days where the State found that there was a high likelihood of a large contribution of PM_{10} from sources on the Nogales, Mexico side of the international border such that the Nogales NA would likely have attained the PM_{10} standard but for emissions from Mexico. The two remaining exceedance days, January 1, 2007 and January 26, 2008, have contributions from PM_{10} sources on the Nogales NA side of the international border such that it cannot be determined that there is a similarly high likelihood that the Nogales NA would not have exceeded the PM_{10} standard but for PM_{10} emissions originating from the Mexican side of the international border. Therefore, according to this daily analysis, the State found that at least 27 of 29 exceedances of the PM_{10} NAAQS observed in the Nogales NA during 2007–2009 can be attributed primarily to sources of PM_{10} from across the international border. Based on these two exceedances and on data completeness and every day sampling for the 2007–2009 timeframe, the State calculated a maximum expected annual exceedance rate of 0.7 exceedances per year.

(ii) Hourly Analysis to Demonstrate Attainment But For International Sources of PM_{10} Emissions

In a second analysis, the State classified each hourly PM_{10} concentration value from the 29 exceedance days based on the likely influence of emissions from Mexico and then recalculated the 24-hour average concentration that would have occurred but for international transport of PM_{10} emissions from Nogales, Mexico. An hourly concentration was classified as influenced by international transport if it met one of four criteria, or decision rules, related to hourly observations of wind direction, wind speed, and temperature change:

(1) Hours with sustained (more than one hour consecutively) southerly winds greater than 4.5 mph (2 meters/second (m/s)), suggesting the primary influence of wind-blown PM_{10} from across the international border;

(2) hours with southerly winds or air flow and decreasing or stable temperatures preceded by *or* followed by hours with similar conditions, suggesting sustained downslope air flows from higher elevations south of the international border;

(3) any hour preceded by *and* followed by hours with southerly wind or air flow and decreasing or stable temperatures, suggesting continued influence of downslope air flow from higher elevations south of the international border; and,

(4) surface wind speed less than or equal to 1.1 mph (0.5 m/s), preceded by or followed by hours with similar conditions, suggesting sustained air mass stagnation where PM_{10} emissions suspended in previous hours remain suspended in the stagnant air mass.

The first decision rule identifies periods consistent with sustained high winds from the south carrying wind-blown PM_{10}, as discussed earlier concerning the May 22, 2008 exceedance day. The second and third decision rules identify periods influenced by downslope wind flow conditions described in the conceptual model as usually occurring in the late afternoon and evening and transporting PM_{10} from higher elevations in Nogales, Mexico to lower elevations in the Nogales NA. The fourth decision rule identifies periods of sustained air mass stagnation usually found in the late night and early morning hours after the early evening downslope wind or air flow has ebbed and before sunrise, after which wind speeds begin to increase from their overnight low values.

[50] For a detailed review of the January 1, 2007 exceedance day, see Section 4.2.1 of ''Clean Air Act, Section 179B Attainment Determination for the Nogales PM_{10} Nonattainment Area'' in Appendix A of the Nogales 2012 Plan.

[51] For a detailed review of the January 26, 2008 exceedance day, see Section 4.2.2 of ''Clean Air Act, Section 179B Attainment Determination for the Nogales PM_{10} Nonattainment Area'' in Appendix A of the Nogales 2012 Plan.

[52] See Figure 6 in ''Clean Air Act, Section 179B Attainment Determination for the Nogales PM_{10} Nonattainment Area'' in Appendix A of the Nogales 2012 Plan.

[53] For a detailed review of the May 22, 2008 exceedance day, see Section 4.2.3 of ''Clean Air Act, Section 179B Attainment Determination for the Nogales PM_{10} Nonattainment Area'' in Appendix A of the Nogales 2012 Plan.

[54] For a detailed review of the January 1, 2009 exceedance day, see Section 4.2.4 of ''Clean Air Act, Section 179B Attainment Determination for the Nogales PM_{10} Nonattainment Area'' in Appendix A of the Nogales 2012 Plan.

Using the low estimate of total Nogales Municipality, Mexico PM_{10} emissions, the analysis of emissions inventories discussed earlier showed that U.S. sources are responsible for a maximum of 36 percent of PM_{10} emissions in the Ambos Nogales region; see Table 9. Conversely, using the high estimate of total Nogales Municipality, Mexico emissions, U.S. sources are responsible for a minimum of 17 to 18 percent of PM_{10} emissions in the Ambos Nogales region in 2008 and 2011, respectively.

TABLE 9—2008 AND 2011 TOTAL PM_{10} EMISSION INVENTORIES: NOGALES NA, ARIZONA AND NOGALES MUNICIPALITY, MEXICO

[Low estimate, tons per year]

	2008	2011	Percent
Nogales NA, Arizona	1,524	1,521	36
Nogales Municipality, Mexico	2,713	2,757	64
Total Ambos Nogales Region	4,237	4,278	100

Source: Tables 6–7 from "Clean Air Act, Section 179B Attainment Determination for the Nogales, Arizona PM_{10} Nonattainment Area" in Appendix A of the Nogales 2012 Plan.

Therefore, for each hour that meets one of the four criteria listed above, instead of assuming that the concentration is entirely due to Mexican sources, a more conservative assumption is that up to 36 percent of the hourly concentrations may be due to contributions from U.S. emission sources. Therefore, in this next step, the observed hourly concentrations were weighted by 0.36 for each hour that meets any one of the four criteria listed above and used this weighted concentration to estimate the 24-hour average concentration that would have occurred in the Nogales NA but for international transport from Mexico.

To show the effects of each decision rule, an estimated 24-hour concentration was calculated after the application of Rule 1, Rules 2 and 3, Rules 1–3, and Rules 1–4. The results are summarized below.[55]

- The application of Rule 1 only removes one day, May 22, 2008, leaving 28 days showing a concentration value greater than 150 μg/m³.
- The application of Rules 2 and 3 removes 27 days, leaving January 1, 2007 and January 26, 2008 showing a concentration value greater than 150 μg/m³; 196 μg/m³ and 244 μg/m³, respectively.
- The application of Rules 1, 2, and 3 again removes 27 days, leaving January 1, 2007 and January 26, 2008 showing a concentration value greater than 150 μg/m³; 196 μg/m³ and 244 μg/m³, respectively.
- The application of Rules 1, 2, 3, and 4 removes 29 days, leaving no estimated days with a value greater than 150 μg/m³. The highest 24-hour average concentration estimated was 107 μg/m³.

In sum, based on this analysis apportioning hourly concentration data using the four criteria to produce an estimated 24-hour average concentration but for international emissions, no exceedance days would have been expected to occur in the Nogales NA, but for transport from Mexico.

Considering the relatively large differences in emissions inventories between the Nogales NA and Nogales Municipality, Mexico and the meteorology described by the conceptual model, it is likely that observed pollution during southerly downslope wind flows originating from Nogales, Mexico also contributed to observed pollution during following hours of sustained stagnation. With the wind direction varying under low wind speeds and stable temperatures, it remains possible, however, that a greater proportion of PM_{10} pollution during hours of sustained stagnation may be coming from U.S. sources. Therefore, a slightly more conservative approach would be to relax the decision rules by not considering sustained stagnation (Rule 4) and assign PM_{10} levels during these hours entirely to the Nogales NA. Consequently, when considering Mexican influence to only occur under conditions of relative high wind speeds (Rule 1) and sustained downslope wind flows from the south (Rules 2 and 3), two exceedance days would have been expected to occur but for international transport: January 1, 2007 and January 26, 2008. Given the finding that no more than two exceedance days would have occurred applying criteria one through three, as determined by this hourly analysis of concentration data, the maximum expected number of annual exceedances is 0.7.

3. Proposed Action on the Nogales Nonattainment Area Section 179B Analysis and Demonstration of Attainment but for International Sources of PM_{10} Emissions

We propose to approve Arizona's section 179B analysis and demonstration of attainment but for international sources of PM_{10} emissions. After meeting the PM_{10} NAAQS from 1994–1997, an increasing number of exceedances occurred in the Nogales NA. While population in the Nogales NA has grown slightly since 1995, the Nogales Municipality population has increased 65 percent, such that in 2010, 90 percent of the Ambos Nogales regional population is the Nogales Municipality, Mexico area. This difference in relative population and population growth over time supports the inference that a much larger proportion of PM_{10} in the Nogales NA comes from emissions sources on the Nogales, Mexico side of the international border.

A comparison of 2008 and 2011 emission inventories between the Nogales Municipality and the Nogales NA shows that pollution loads may differ by a ratio of 1.8–4.6 to one on a south-to-north basis relative to the international border. The Nogales NA contributes 17 to 36 percent of PM_{10} emissions in the Ambos Nogales region, depending on the emissions inventory estimate chosen for the Nogales Municipality, Mexico. Conversely, the Nogales Municipality, Mexico contributes 83 to 64 percent of PM_{10} emissions in the Ambos Nogales region.

In its review of the ambient PM_{10} data, meteorological data, and through its analyses, Arizona found that the Ambos Nogales area's meteorology and topography influence the observed exceedances of PM_{10} NAAQS and there is a definite south-to-north directional component to the ambient air quality

[55] The observed concentrations and meteorological data for each hour of each exceedance day, the classification based on the criteria listed above, and the re-calculation of the estimated 24-hour average concentrations but for international transport are provided in Section 3.7 of "Analysis of Ambient PM_{10} Levels, Topography, and Meteorological Data in Nogales, Arizona: 2007–2009" in Appendix D of the Nogales 2012 Plan.

data underlying the exceedances of the PM_{10} NAAQS. Finally, daily and hourly analyses of the most recent three years of quality assured and State certified ambient PM_{10} and meteorological data from 2007–2009 show that no more than two, and likely none, of the 29 exceedances would have occurred in the Nogales NA, but for PM_{10} emissions from Mexico.

Based on these two exceedances, data completeness, and every day sampling for the 2007–2009 timeframe, the calculated maximum expected annual exceedance rate is 0.7 exceedances per year. The standard we use to demonstrate attainment of the PM_{10} NAAQS, ''but for'' international emissions, is that the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$ must be equal to or less than one. To conclude, we propose to determine that Arizona has met this standard and to approve their section 179B Analysis and demonstration of attainment but for international emissions for the Nogales NA.

Even if a nonattainment area would have attained the PM_{10} NAAQS but for international transport of emissions from outside the U.S., section 179B still requires the area to meet the statutory requirements for a nonattainment plan. Section 179B suspends the obligation to provide an attainment demonstration showing actual attainment of the NAAQS, but a nonattainment area still has to meet basic requirements such as RACM/RACT, RFP and contingency measures. We will discuss how the 2012 Nogales PM_{10} Plan addressed these requirements in the following sections of this proposed rule.

C. Reasonably Available Control Measures (RACM)/Reasonably Available Control Technology (RACT) and Adopted Control Strategy

1. Requirement for RACM/RACT

CAA section 172(c)(1) requires that an attainment plan ''provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology), and shall provide for attainment of the national primary ambient air quality standards.'' EPA defines RACM as measures that a State finds are both reasonably available and contribute to attainment as expeditiously as practicable in its nonattainment area. See also the General Preamble, 57 FR 13560; (April 16, 1992).

The General Preamble also discusses the moderate area PM_{10} requirements for RACM/RACT at section 189(a)(1)(C). As a starting point, a State should review the list of available control measures provided with the General Preamble and provide a reasoned judgment for rejecting any of these available control measures. A State may show that one or more control measures are unreasonable because emissions from those sources are insignificant within the nonattainment area; as such, those control measures would not be considered RACM for the nonattainment area. Any remaining control measures from the General Preamble list should then be evaluated for reasonableness according to their technological feasibility and cost of control. See 57 FR 13540–13541; (April 16, 1992).

The 1994 General Preamble Addendum also discusses the requirements for RACM as applied to nonattainment areas affected by international transport. In international border areas, ''RACM/RACT must be implemented to the extent necessary to demonstrate attainment by the applicable attainment date if emissions emanating from outside the U.S. were not included in the analysis.'' As set forth in section 179B(a)(2), a State's moderate area PM_{10} plan must be ''adequate'' to attain and maintain the PM_{10} NAAQS, but for emissions from outside the U.S. Therefore, nothing in section 179B relieves a State from the requirement to address and implement RACM. Nonetheless, States are not required to implement control measures that go beyond what the plan demonstrates would otherwise be adequate for attainment and maintenance of the PM_{10} NAAQS but for emissions from outside the U.S. See 59 FR 42001; (August 16, 1994). For a nonattainment area making a showing under section 179B, the area is required to implement RACM/RACT sufficient to attain the standard by the applicable attainment date, but for emissions from outside the U.S., and to maintain the level of emissions from U.S. sources sufficient to provide for continued attainment of the NAAQS, but for the emissions from outside the U.S.

2. RACM/RACT in the Nogales Nonattainment Area

For the Nogales 2012 Plan, ADEQ reviewed the RACM/RACT demonstration from the 1993 Nogales PM_{10} Plan in light of the updated emissions inventories and section 179B demonstration and concluded that no additional RACM beyond that already implemented is required. In support of this conclusion, ADEQ describes the status of implementation of the RACM adopted as part of the 1993 Nogales PM_{10} Plan. Based on our review of both the 1993 plan and the current 2012 plan, and for the reasons given below, we agree with ADEQ's conclusion that no further RACM is required.

First, we note that, based on the emissions inventories from the 1993 and 2012 plans, entrainment of PM_{10} by vehicle travel over unpaved surfaces, primarily roads, remains the most significant source of PM_{10} emissions generated within the Nogales NA, and while PM_{10} emissions from this source are certainly lower than they would have been without additional paving, they still account for more than 50 percent of the overall PM_{10} inventory in the Nogales NA.

In the late 1980s, ADEQ, Santa Cruz County, and the city of Nogales recognized the importance of PM_{10} emissions from entrainment by vehicle travel over unpaved surfaces. To reduce such emissions, the city of Nogales undertook a program to pave the unpaved roads in the city, paving an average of two miles of unpaved roads per year from 1989 through 1992,[56] to chip-seal the city's equipment yard, and to pave the unpaved parking areas of Memorial Park and Neighborhood Center. Over this same period, within the unincorporated area of the Nogales NA, Santa Cruz County undertook a program to chip-seal unpaved county roads and chip-sealed approximately 2–3 miles of previously unpaved roads per year.[57]

Through the 1993 Nogales PM_{10} Plan, the city of Nogales committed to paving the remainder of its unpaved streets by 1998, and Santa Cruz County committed to chip-seal at least one mile of unpaved road per year over 1993 and 1994 within the Nogales NA.[58]

The 1993 Nogales PM_{10} Plan also cited diesel-powered truck idling at two ports of entry (DeConcini and Mariposa) along the U.S. Mexico border in Nogales as a source of PM_{10} emissions within the Nogales NA and identified the reduction of idling time by such trucks as a RACM for implementation by the U.S. Customs Service. In response, the U.S. Customs Service committed to complete certain

[56] To put a rate of two miles of paving per year into context, we note that, by 1993, there remained approximately 10 miles of unpaved public roads within the city of Nogales.

[57] For perspective on the county's rate of paving/chip sealing of unpaved roads, we note that as of 2011 there were approximately 40 to 50 miles of unpaved roads remaining in the unincorporated area of the Nogales NA.

[58] See 1993 Nogales PM_{10} Plan, pages 31 and 46.

capital improvements, including the addition of four north-bound lanes at the DeConcini Port of Entry (central business district within Nogales) and three north-bound lanes at the Mariposa Port of Entry (west of the central business district).

Third, in the late 1980s and early 1990s, the dragging of the unpaved border road by the U.S. Border Patrol (to detect fresh footprints) was considered another source of PM_{10} emissions contributing to ambient PM_{10} concentrations in Nogales. The 1993 Nogales PM_{10} Plan does not identify RACM for this source. However, the 1993 Nogales PM_{10} Plan notes that, in 1992, the U.S. Border Patrol discontinued the practice of dragging a 1.5-mile stretch of border road within the Nogales NA.[59] The Border Patrol discontinued the practice over this stretch of road because it was ineffective. The road was also wired for movement sensors to detect human movement. These changes reduced this source of PM_{10} emissions within the Nogales NA.

By the end of 1994, which was the applicable attainment date for the Nogales PM_{10} nonattainment area, the city of Nogales had paved an additional four miles of unpaved roads (beyond that completed through 1992); Santa Cruz County had paved an additional four miles of South River Road; and the U.S. Customs Service had completed the capital improvements described above at the DeConcini and Mariposa Ports of Entry. Together, these measures, in addition to those PM_{10}-reducing measures completed in the late 1980s and early 1990s and certain other measures implemented outside of the SIP process (i.e., the discontinuance of dragging the border road), were sufficient to reduce PM_{10} concentrations in the Nogales NA such that maximum 24-hour PM_{10} concentrations decreased from greater than 200 $\mu g/m^3$ in the late 1980s to less than 120 $\mu g/m^3$ by 1994.

Based on the data collected during the 1992–1994 period, EPA determined that the Nogales area had attained the PM_{10} standard by the 1994 area's statutory attainment date. See 76 FR 1532; (January 11, 2011). Thus, the measures implemented by the city of Nogales, Santa Cruz County, and U.S. Customs Service provided for attainment by the applicable attainment date and thereby met the RACM requirement. The Nogales 2012 Plan did not include the RACM commitments contained in the 1993 Nogales PM_{10} Plan but, given their prior completion and permanent nature, we do not believe that the commitments need be made a part of the SIP.

EPA does recognize that violations of the PM_{10} standard began to occur once again in Nogales beginning in 1998 and that such violations continue to the present, but, based on the section 179B demonstration contained in the 2012 Nogales Plan, and evaluated in section IV.B herein, we do not believe that additional RACM are required to be implemented within the Nogales NA because we believe that the violations that have occurred since 1998 would not have occurred but for emissions from Mexico.

Our conclusion in this regard recognizes that PM_{10} emissions in various important PM_{10} source categories are affected by changes in population, and whereas the population in the Nogales NA increased by approximately 5,000 persons during the 20-year period from 1990 to 2010, the population in Nogales, Mexico increased by approximately 118,000 persons during that same period. Moreover, the passage of the North American Fair Trade Agreement (NAFTA) in 1994 has continued to fuel the already high level of industrial (Maquiladoras) development on the Mexican side of the border. Most significantly, however, we note ADEQ's detailed evaluation, as part of the section 179B demonstration, of the 29 exceedances measured during the 2007–2009 period and determination that the highest 24-hour PM_{10} concentration in Nogales, but for emissions from Mexico, was 107 $\mu g/m^3$, i.e., well below the 150 $\mu g/m^3$ standard.[60] ADEQ's section 179B demonstration, which we are proposing to approve, thus provides support for the conclusion that the violations that have occurred since 1998 would not have occurred but for the emissions from Mexico and thus no additional RACM need be implemented within the Nogales NA.

D. Reasonable Further Progress Demonstration and Contingency Measures in the Nogales Nonattainment Area

1. Reasonable Further Progress

CAA section 172(c)(2) requires that plans for nonattainment areas shall provide for reasonable further progress (RFP). RFP is defined in section 171(1) as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable [NAAQS] by the applicable date.''

The Nogales 2012 Plan cites EPA's determination that the area attained the PM_{10} standard by the applicable attainment date as affirming that RFP requirements have been met. We agree that the RFP requirement was met in the Nogales NA by 1994 through the various paving projects and other measures implemented by the city of Nogales, Santa Cruz County, and U.S. Customs Service because the measures in fact provided the incremental reductions needed by the area to attain by the applicable attainment date (1994). In addition, for the same reasons that no additional RACM need be implemented in the Nogales NA, notwithstanding the advent of violations of the PM_{10} standard once again in 1998, we believe that no additional RFP demonstration must be submitted by ADEQ for this area.

2. Contingency Measures

Regarding contingency measures, under CAA section 172(c)(9), all attainment plans must include contingency measures to be implemented if an area fails to meet RFP (RFP contingency measures) and contingency measures to be implemented if an area fails to attain the PM_{10} NAAQS by the applicable attainment date (attainment contingency measures). These contingency measures must be fully adopted rules or control measures that are ready to be implemented quickly without significant additional action by the State. They must also be measures not relied on in the plan to demonstrate RFP or attainment and should provide SIP-creditable emissions reductions equivalent to one year of RFP. Finally, the SIP should contain trigger mechanisms for the contingency measures and specify a schedule for their implementation.

EPA guidance also provides that contingency measures could be implemented early, i.e., prior to the milestone or attainment date.[61] Consistent with this policy, states are allowed to use excess reductions from already adopted measures to meet the CAA section 172(c)(9) contingency measure requirement. This is because the purpose of contingency measures is to provide extra reductions that are not

[59] See 1993 Nogales PM_{10} Plan, page 30.

[60] The estimated 24-hour average concentrations but for international transport for the 29 exceedance days are provided in Section 3.7 of ''Analysis of Ambient PM_{10} Levels, Topography, and Meteorological Data in Nogales, Arizona: 2007–2009'' in Appendix D of the Nogales 2012 Plan.

[61] Memorandum, G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch to Air Directors, ''Contingency Measures for Ozone and Carbon Monoxide Redesignations,'' June 1, 1992.

relied on for RFP or attainment that will provide for continued progress while the plan is being revised to fully address the failure to meet the required milestone or failure to meet the standard by the applicable attainment date. Nothing in the CAA precludes a State from implementing such measures before they are triggered. This approach has been approved in numerous SIPs. See 62 FR 15844; (April 3, 1997), (approval of the Indiana portion of the Chicago area 15 percent Rate of Progress plan); 66 FR 30811; (June 8, 2001), (proposed approval of the Rhode Island post-1996 ROP plan); and 66 FR 586 and 66 FR 634; (January 3, 2001), (approval of the Massachusetts and Connecticut 1-hour ozone attainment demonstrations). In the only adjudicated challenge to this approach, the court upheld it. See *Louisiana Environmental Action Network* v. *EPA,* 382 F.3d 575 (5th Cir. 2004). The Nogales 2012 Plan points to the paving projects that have been implemented since 1994 as meeting the contingency measure requirement for the Nogales NA and as the justification for not including any additional contingency measures in the 2012 Nogales Plan. In assessing the extent of road paving in the Nogales NA, ADEQ consulted with officials in the city of Nogales and Santa Cruz County to determine the extent of road paving since 1992, when the Nogales NA began to record ambient PM_{10} levels below the NAAQS.

As noted above, in the 1993 Nogales PM_{10} Plan, the city of Nogales committed to paving all public roads in the city by 1998. For the purposes of the Nogales 2012 Plan, ADEQ reviewed the status of implementation of the city's paving program, and using aerial photography, ADEQ identified 11 unpaved roads that were paved between 1993 and 1996 totaling 8.4 miles.[62] Among these 11 roads, ADEQ could locate traffic data for only nine of them (totaling 7.7 miles) from which to estimate the associated reduction in PM_{10} emissions. Based on the control effectiveness of paving and available traffic data, ADEQ estimated that paving of the nine roads between 1993 and 1996 reduced PM_{10} emissions by approximately 80 tons per year. See Table 5.3 from the Nogales 2012 Plan.[63] Assuming that half that reduction occurred after 1994, the resulting reduction that was surplus to the attainment needs for the Nogales NA was approximately 40 tons per year, although the actual reduction was greater than 40 tons per year because two specific roadways that were paved (but for which no traffic data was available) were not included in the calculation. ADEQ also checked on the status of the paving program with officials from the city of Nogales who reported that all of the unpaved public roads in Nogales have been paved and accepted into the City's Street Maintenance Program.[64]

In a similar implementation review using aerial photography and data provided by Santa Cruz County, ADEQ estimated that Santa Cruz County paved/chip-sealed 40 miles of unpaved roads between 1994 and 2001 and an additional 40 miles of unpaved roads between 2002 and 2008. Traffic data was available, however, for only approximately 10 miles of the total 80 miles of paving/chip-sealing in the post-attainment era, but ADEQ estimates that paving/chip-sealing this subset of the larger amount reduced PM_{10} emissions in the Nogales NA by approximately 110 tons per year. See Table 5.4 in the 2012 Nogales Plan.[65] [66] Overall, Santa Cruz County and ADEQ provided different estimates of the number and extent of paved/chip-sealed roads and unpaved roads in the unincorporated area of the Nogales NA, but both sets of estimates indicate that more than 70 percent of the roads in the unincorporated area within the Nogales NA are paved/chip-sealed at the present time.

Based on our review of the data collected by ADEQ and presented in the Nogales 2012 Plan, we agree with ADEQ that post-1994 paving projects in the Nogales NA have provided PM_{10} emissions reductions beyond those relied upon by RFP or attainment and have also served to ensure that emissions generated within the Nogales NA do not cause a violation of the PM_{10} standard. The city of Nogales and Santa Cruz County did not wait until a triggering event to implement the paving projects but continued the paving programs that began in the late 1980s and that helped the Nogales NA attain the standard by the applicable attainment date (1994). These projects have provided significant PM_{10} emissions reductions, i.e., greater than 150 tons per year if all of the unpaved roads that were paved/chip-sealed were included, beyond that required for attainment by the applicable attainment date.

We consider such ''early'' implementation of contingency measures to be acceptable in this instance because the associated emissions reductions provide extra reductions that are not relied upon for RFP or attainment and that provide extra assurance that no violations would occur in the Nogales NA but for emissions from Mexico. The effectiveness of implementation of the contingency measures is supported by the conclusion in ADEQ's section 179B demonstration that estimates that the highest 24-hour PM_{10} concentration in Nogales, but for emissions from Mexico, during the 2007–2009 period was 107 $\mu g/m^3$, i.e., well below the 150 $\mu g/m^3$ standard. Therefore, we conclude that implementation of the post-1994 paving projects in the Nogales NA meets the contingency measure requirement of section 172(c)(9).

E. Motor Vehicle Emissions Budgets for Transportation Conformity

1. Requirements for Transportation Conformity

Transportation conformity is required by section 176(c) of the CAA. Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the EPA's transportation conformity rule, codified at 40 CFR part 93, subpart A. Our transportation conformity rule requires that transportation plans, programs, and projects developed by Metropolitan Planning Organizations (MPOs) in nonattainment and maintenance areas conform to SIPs and establishes the criteria and procedures for determining whether or not they do so. Conformity to the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards or any interim milestone.

Control strategy SIP submittals (such as RFP and attainment SIP submittals) must specify the maximum emissions of transportation-related emissions from existing and planned highway and transit systems allowed in the appropriate years, *i.e.,* the motor vehicle emissions budgets (MVEB or ''budgets''). The submittal must also demonstrate that these transportation-related emissions levels, when considered with emissions from all

[62] See Appendix E.4 of the Nogales 2012 Plan for aerial photography used in implementation review.

[63] See Appendix E of the Nogales 2012 Plan for the Technical Support Document concerning the calculation of these emission reduction estimates.

[64] Correspondence from Juan Guerra, City Engineer, City of Nogales, Arizona to James Wagner, ADEQ; April 11, 2012; see Appendix F.3 of Nogales 2012 Plan.

[65] See appendix E.4 of the Nogales 2012 Plan for aerial photography used in implementation review.

[66] See Appendix E.2 of the Nogales 2012 Plan for supporting information from Santa Cruz County concerning paving/chip-sealing projects completed by the County.

other sources, are consistent with RFP or attainment of the NAAQS, whichever is applicable. MPOs cannot use the budgets and the U.S. Department of Transportation (USDOT) cannot approve a Regional Transportation Plan (RTP) or Transportation Improvement Program (TIP) conformity analysis using the budgets until EPA had made an affirmative adequacy finding based on a preliminary review of the SIP. MPOs must use budgets in a submitted but not yet approved SIP, after EPA has determined that the budgets are adequate. For EPA to find these emissions levels or ''budgets'' adequate and/or approvable, the submittal must meet the conformity adequacy provisions of 40 CFR 93.118(e)(4) and (5). Also, motor vehicle emissions budgets cannot be approved until EPA completes a detailed review of the entire SIP and determines that the SIP and the budgets will achieve their intended purpose (*i.e.,* RFP, attainment or maintenance). For more information on the transportation conformity requirement and applicable policies on budgets, please visit our transportation conformity Web site at: *http://www.epa.gov/otaq/stateresources/transconf/index.htm.*

PM_{10} attainment and RFP plans should identify budgets for direct PM_{10} and PM_{10} attainment plan precursors. Direct PM_{10} budgets should include PM_{10} motor vehicle emissions from tailpipe, brake wear, and tire wear. States must also consider whether reentrained paved and unpaved road dust or highway and transit construction dust are significant contributors and should be included in the direct PM_{10} budget. (See 40 CFR 93.102(b) and 93.122(e) and the conformity rule preamble at 69 FR 40004, 40031–40036; (July 1, 2004)). The applicability of emission trading between conformity budgets for conformity purposes is described in 40 CFR 93.124(c).

2. Motor Vehicle Emissions Budget for the Nogales Nonattainment Area

Usually, States are required to consult with local metropolitan planning organizations (MPOs) when developing a MVEB. The Nogales NA does not have an MPO. To develop the MVEB, ADEQ consulted with EPA and the Arizona Department of Transportation (ADOT). The Federal Highway Administration's Highway Statistics statewide series data on Arizona shows a decline in vehicle miles traveled (VMT) between 2007 and 2008, and no change in VMT between 2008 and 2009. Emission inventory estimates for 2011 show a slight decrease in VMT. This trend is consistent with economic conditions. As discussed earlier in this proposed rule, the section 179B demonstration shows attainment of the PM_{10} standard in the Nogales NA, but for emissions from Mexico. The section 179B demonstration, proposed for approval herein, relies on a detailed analysis of PM_{10} exceedances that occurred during a specific three-year period (2007–2009), but assuming the 2007–2009 period is representative of the post-attainment date (1994) period, the conclusion that no violations would occur in Nogales but for emissions from Mexico can be applied throughout the post-attainment period. As such, there are several different years which are consistent with the applicable requirements for reasonable further progress and attainment, and which could be used for development of a MVEB.[67] The State chose 2011 as the year for the MVEB. The MVEB was determined using information from the emissions inventories described in Chapter 3 and included in Appendix B of the Nogales 2012 Plan.

The State's estimated MVEB for the Nogales NA includes PM_{10} emissions from all on-road vehicle emissions source, and reentrained fugitive dust from unpaved and paved roads. EPA's current MOVES (MOVES2010a) emissions model for on-road mobile sources was used to estimate the on-road motor vehicle portion of the 2011 MVEB. MOVES estimates tailpipe emissions from cars, trucks, motorcycles, buses, as well as brake and tire wear. Secondary PM_{10} derived from PM_{10} precursors are not identified as sources of PM_{10} contributing to exceedances of the PM_{10} NAAQS in the Nogales NA, either in the emissions inventories or in the plan, in general.

Fugitive emissions from paved and unpaved roads are affected by the number of VMT, silt volume on paved roads, and other local factors. Emissions estimates for these source categories were based on data obtained from State and federal agencies for the 2008 NEI. Estimates for Santa Cruz County were then apportioned to the Nogales NA based on population. The 2011 p.m.10 motor vehicle emissions budget for the Nogales NA was estimated at 1,000.3 tons per year. See Table 10.

[67] 40 CFR 93.118(e)(4)(iv) requires motor vehicle emissions budget(s), when considered together with all other emissions sources, to be consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission).

TABLE 10—2011 NOGALES NA PM_{10} MOTOR VEHICLE EMISSIONS BUDGET

[Tons]

Source category	PM_{10}
Unpaved Road Dust	864.9
Paved Road Dust	121.4
On-road Motor Vehicle—Gasoline	2.6
On-road Motor Vehicle—Diesel	11.4
Total	1,000.3

Source: Table 7.1 of the Nogales 2012 Plan and "2008 and 2011 PM_{10} Emissions Inventories for the Nogales NA, Santa Cruz County, Arizona" in Appendix B of the Nogales 2012 Plan.

3. Proposed Action on the Motor Vehicle Emissions Budget for the Nogales Nonattainment Area

We propose to approve the MVEB for the Nogales NA as submitted by ADEQ contingent upon ADEQ's inclusion of road construction PM_{10} in the MVEB. Road construction PM_{10} should be included because, as the second largest source of PM_{10} emissions generated within the Nogales NA, road construction PM_{10} is a significant contributor to the overall Nogales NA PM_{10} inventory. See 40 CFR 93.122(e). As revised to include road construction PM_{10}, we propose to approve the MVEB for three reasons. First, we find that the MVEB is derived from a comprehensive, accurate, and current emissions inventory that we believe meets the requirements of section 172(c)(3) of the CAA. Second, the MVEB includes all on-road sources of PM_{10} including fugitive dust emissions from unpaved and paved roads and will include road construction PM_{10}, and was estimated using the latest motor vehicle emissions model available at the time of the emissions inventory was composed, the MOVES2010a model. Third, the MVEB are derived from emissions estimates used by ADEQ in the section 179B demonstration to show that the Nogales area would attain the PM_{10} standard, but for emissions from Mexico.

VI. EPA's Proposed Action and Request for Comment

Based on our review, EPA proposes to approve this moderate area plan submitted by Arizona to attain the PM_{10} NAAQS for the Nogales nonattainment area. Specifically, under CAA section 110(k)(3), EPA proposes to approve the following elements of the Nogales 2012 p.m.10 attainment plan:

(1) The 2008 base year and 2011 emissions inventories as meeting the requirements of CAA section 172(c)(3);

(2) the demonstration of attainment but for international emissions as

meeting the requirements of CAA section 179B(a)(1);

(3) the implementation of paving projects and capital improvement projects at the Ports of Entry within the Nogales NA prior to the attainment deadline (1994) as meeting the RACM/RACT requirements of CAA sections 172(c)(1), 179B(a)(2), and 189(c)(1)(C);

(4) the implementation of paving projects and capital improvement projects at the Ports of Entry to meet the RFP demonstration requirement of CAA sections 172(c)(2) and 179B(a)(2);

(5) the implementation of post-1994 paving projects as meeting the contingency measure requirements of CAA sections 172(c)(9) and 179B(a)(2); and,

(6) the 2011 attainment year motor vehicle emissions budget if revised to include road construction PM_{10}, because, as revised, it is derived from the section 179B demonstration and meets the requirements of CAA section 176(c) and of 40 CFR 93, subpart A.

Even with our proposed approval of Arizona's demonstration that the Nogales NA is attaining the PM_{10} NAAQS but for international transport from Mexico, any final action resulting from this proposal would not constitute a redesignation to attainment under CAA section 107(d)(3) because we have not determined that the area has met the other CAA requirements for redesignation to attainment of the PM_{10} NAAQS. The classification and designation status in 40 CFR part 81 would remain moderate nonattainment for the Nogales NA until such time as EPA determines that Arizona has met the CAA requirements for redesignating the Nogales NA to attainment for the PM_{10} NAAQS. EPA is soliciting public comments on the issues discussed in this **Federal Register** Notice. We will accept comments from the public on this proposal for the 30 days after publication of this proposed rule in the **Federal Register**. We will consider these comments before taking final action.

VII. Statutory and Executive Order Reviews

With this action, we propose to approve the moderate area PM_{10} plan submitted by Arizona for the Nogales NA and, if finalized, this proposed action would not impose additional requirements beyond those imposed by State law or by the CAA. For that reason, this proposed action:

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

In addition, this proposed action does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249; November 9, 2000), because the SIP obligations discussed herein do not apply to Indian Tribes and thus will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: June 20, 2012.

Jared Blumenfeld,

Regional Administrator, EPA Region IX.

[FR Doc. 2012–15544 Filed 6–26–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL REGISTER

Vol. 77 Wednesday,

No. 124 June 27, 2012

Part III

Securities and Exchange Commission

17 CFR Parts 229 and 240

Listing Standards for Compensation Committees; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229 and 240

[Release Nos. 33–9330; 34–67220; File No. S7–13–11]

RIN 3235–AK95

Listing Standards for Compensation Committees

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting a new rule and amendments to our proxy disclosure rules to implement Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which added Section 10C to the Securities Exchange Act of 1934. Section 10C requires the Commission to adopt rules directing the national securities exchanges and national securities associations to prohibit the listing of any equity security of an issuer that is not in compliance with Section 10C's compensation committee and compensation adviser requirements. In accordance with the statute, new Rule 10C–1 directs the national securities exchanges to establish listing standards that, among other things, require each member of a listed issuer's compensation committee to be a member of the board of directors and to be ''independent,'' as defined in the listing standards of the national securities exchanges adopted in accordance with the final rule. In addition, pursuant to Section 10C(c)(2), we are adopting amendments to our proxy disclosure rules concerning issuers' use of compensation consultants and related conflicts of interest.

DATES: *Effective Date:* July 27, 2012.

Compliance Dates: Each national securities exchange and national securities association must provide to the Commission, no later than September 25, 2012, proposed rule change submissions that comply with the requirements of Exchange Act Rule 10C–1. Further, each national securities exchange and national securities association must have final rules or rule amendments that comply with Rule 10C–1 approved by the Commission no later than June 27, 2012. Issuers must comply with the disclosure changes in Item 407 of Regulation S–K in any proxy or information statement for an annual meeting of shareholders (or a special meeting in lieu of the annual meeting) at which directors will be elected occurring on or after January 1, 2013.

FOR FURTHER INFORMATION CONTACT: N. Sean Harrison, Special Counsel, Office of Rulemaking, at (202) 551–3430, or Heather Maples, Senior Special Counsel, Office of Chief Counsel, at (202) 551–3520, in the Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are adopting new Rule 10C–1 under the Securities Exchange Act of 1934 [1] and amendments to Item 407 [2] of Regulation S–K.[3]

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I. Background And Summary

On March 30, 2011, we proposed a new rule and rule amendments [4] to implement Section 10C of the Securities Exchange Act of 1934 (the ''Exchange Act''),[5] as added by Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the ''Act'').[6] Section 10C requires the Commission to direct the national securities exchanges [7] (the ''exchanges'') and national securities associations [8] to prohibit the listing of any equity

[1] 15 U.S.C. 78a *et seq.*

[2] 17 CFR 229.407.

[3] 17 CFR 229.10 through 229.1208.

[4] *See* Release No. 33–9199 (Mar. 30, 2011) [76 FR 18966] (the ''Proposing Release'').

[5] 15 U.S.C. 78j–3.

[6] Public Law 111–203, 124 Stat. 1900 (2010).

[7] A ''national securities exchange'' is an exchange registered as such under Section 6 of the Exchange Act [15 U.S.C. 78f]. There are currently sixteen national securities exchanges registered under Section 6(a) of the Exchange Act: NYSE Amex (formerly the American Stock Exchange), BATS Exchange, BATS Y-Exchange, BOX Options Exchange, C2 Options Exchange, Chicago Board Options Exchange, Chicago Stock Exchange, EDGA Exchange, EDGX Exchange, International Securities Exchange, NASDAQ OMX BX (formerly the Boston Stock Exchange), The NASDAQ Stock Market, National Stock Exchange, New York Stock Exchange, NYSE Arca and NASDAQ OMX PHLX (formerly Philadelphia Stock Exchange). Certain exchanges are registered with the Commission through a notice filing under Section 6(g) of the Exchange Act for the purpose of trading security futures. See Section II.B.1, below, for a discussion of these types of exchanges.

[8] A ''national securities association'' is an association of brokers and dealers registered as such under Section 15A of the Exchange Act [15 U.S.C. 78o–3]. The Financial Industry Regulatory Authority (''FINRA'') is the only national securities association registered with the Commission under Section 15A of the Exchange Act. FINRA does not list equity securities; therefore, we refer only to national securities exchanges in this release. In addition, Section 15A(k) of the Exchange Act [15 U.S.C. 78o–3(k)] provides that a futures association registered under Section 17 of the Commodity Exchange Act [7 U.S.C. 21] shall be registered as a national securities association for the limited purpose of regulating the activities of members who are registered as broker-dealers in security futures products pursuant to Section 15(b)(11) of the Exchange Act [15 U.S.C. 78o(b)(11)]. See Section II.B.1, below, for a discussion regarding security futures products.

security of an issuer, with certain exceptions, that does not comply with Section 10C's compensation committee and compensation adviser requirements.[9]

Specifically, Section 10C(a)(1) of the Exchange Act requires the Commission to adopt rules directing the exchanges to establish listing standards that require each member of a listed issuer's compensation committee to be a member of the board of directors and to be ''independent.'' [10] The term ''independent'' is not defined in Section 10C. Instead, Section 10C(a)(3) provides that ''independence'' is to be defined by the exchanges after taking into consideration ''relevant factors,'' which are required to include (1) a director's source of compensation, including any consulting, advisory or other compensatory fee paid by the issuer to such director, and (2) whether a director is affiliated with the issuer, a subsidiary of the issuer, or an affiliate of a subsidiary of the issuer. Section 10C(a)(4) of the Exchange Act requires our rules to permit the exchanges to exempt particular relationships from the independence requirements, as each exchange determines is appropriate, taking into consideration the size of an issuer and any other relevant factors.

In addition to the independence requirements set forth in Section 10C(a), Section 10C(f) of the Exchange Act requires the Commission to adopt rules directing the exchanges to establish listing standards that provide for the following requirements relating to compensation committees and compensation consultants, independent legal counsel and other advisers (collectively, ''compensation advisers''), as set forth in paragraphs (b)–(e) of Section 10C:

- Each compensation committee must have the authority, in its sole discretion, to retain or obtain the advice of compensation advisers; [11]
- Before selecting any compensation adviser, the compensation committee must take into consideration specific factors identified by the Commission that affect the independence of compensation advisers; [12]
- The compensation committee must be directly responsible for the appointment, compensation and oversight of the work of compensation advisers; [13] and
- Each listed issuer must provide appropriate funding for the payment of reasonable compensation, as determined by the compensation committee, to compensation advisers.[14]

Finally, Section 10C(c)(2) requires each issuer to disclose in any proxy or consent solicitation material for an annual meeting of shareholders (or a special meeting in lieu of the annual meeting), in accordance with Commission regulations, whether the issuer's compensation committee retained or obtained the advice of a compensation consultant; whether the work of the compensation consultant has raised any conflict of interest; and, if so, the nature of the conflict and how the conflict is being addressed.

We proposed new Exchange Act Rule 10C–1 to implement the compensation committee listing requirements of Sections 10C(a)–(g) [15] of the Exchange Act. We proposed rule amendments to Item 407 of Regulation S–K to require the disclosures mandated by Section 10C(c)(2), which are to be provided in any proxy or information statement relating to an annual meeting of shareholders at which directors are to be elected (or special meeting in lieu of the annual meeting). In connection with these amendments, we also proposed to revise the current disclosure requirements with respect to the retention of compensation consultants.

The comment period for the Proposing Release closed on May 19, 2011.[16] We received 58 comment letters from 56 different commentators, including pension funds, corporations, compensation consulting firms, professional associations, trade unions, institutional investors, investment advisory firms, law firms, academics, individual investors and other interested parties. Commentators generally supported the proposed implementation of the new requirements. Some commentators urged us to adopt additional requirements not mandated by the Act. Other commentators opposed some aspects of the proposed rule and rule amendments and suggested modifications to the proposals.

We have reviewed and considered all of the comments that we received on the proposals. The final rules reflect a number of changes made in response to these comments. We discuss our revisions with respect to the proposed rule and rule amendments in more detail throughout this release.

II. Discussion of the Final Rules

A. Exchange Listing Standards

1. Applicability of Listing Standards

We proposed to direct the exchanges to adopt listing standards that would apply Section 10C's independence requirements to members of a listed issuer's compensation committee as well as any committee of the board that performs functions typically performed by a compensation committee. We are adopting this aspect of the rule substantially as proposed, but with one change reflecting comments we received.

a. Proposed Rule

In enacting Section 10C of the Exchange Act, Congress intended to require that ''board committees that set compensation policy will consist only of directors who are independent.'' [17] In addition, Congress sought to provide ''shareholders in a public company'' with ''additional disclosures involving compensation practices.'' [18] Although Section 10C includes numerous provisions applicable to the ''compensation committees'' of listed issuers, it does not require a listed issuer to have a compensation committee or a committee that performs functions typically assigned to a compensation committee. Moreover, Section 10C does not provide that, in the absence of a compensation committee, the entire board of directors will be considered to be the compensation committee, nor does it include provisions that have the effect of requiring a compensation committee as a practical matter.

Neither the Act nor the Exchange Act defines the term ''compensation committee.'' [19] Our rules do not

[9] *See* Exchange Act Sections 10C(a) and (f).

[10] Five categories of issuers are excluded from this requirement: controlled companies, limited partnerships, companies in bankruptcy proceedings, open-end management investment companies registered under the Investment Company Act of 1940 (the ''Investment Company Act''), and foreign private issuers that disclose in their annual reports the reasons why they do not have an independent compensation committee.

[11] Exchange Act Sections 10C(c)(1)(A) and 10C(d)(1).

[12] Exchange Act Section 10C(b).

[13] Exchange Act Sections 10C(c)(1)(B) and 10C(d)(2).

[14] Exchange Act Section 10C(e).

[15] Section 10C(g) of the Exchange Act exempts controlled companies from the requirements of Section 10C.

[16] We extended the original comment period deadline from April 29, 2011 to May 19, 2011. *See* Listing Standards for Compensation Committees, Release No. 33–9203 (Apr. 29, 2011) [76 FR 25273].

[17] *See* H.R. Rep. No. 111–517, Joint Explanatory Statement of the Committee of Conference, Title IX, Subtitle E ''Accountability and Executive Compensation,'' at 872–873 (Conf. Rep.) (June 29, 2010).

[18] *Id.*

[19] By contrast, Section 3(a)(58) of the Exchange Act defines an ''audit committee'' as ''a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial

Continued

currently require that a listed issuer establish a compensation committee. Current exchange listing standards, however, generally require listed issuers either to have a compensation committee or to have independent directors determine, recommend or oversee specified executive compensation matters.[20] For example, the New York Stock Exchange (''NYSE'') requires a listed issuer to have a compensation committee composed solely of independent directors and to assign various executive compensation-related tasks to that committee.[21] On the other hand, the NASDAQ Stock Market (''Nasdaq'') does not mandate that a listed issuer have a compensation committee, but requires that executive compensation be determined or recommended to the board for determination either by a compensation committee composed solely of independent directors or by a majority of the board's independent directors in a vote in which only independent directors participate.[22] Some of the other exchanges have standards comparable to the NYSE's and require their listed issuers to have independent compensation committees.[23] Other exchanges have standards comparable to Nasdaq's and, in the absence of a compensation committee, require executive compensation determinations to be made or recommended by a majority of independent directors on the listed issuer's board.[24]

Proposed Rule 10C–1(b) would direct the exchanges to adopt listing standards that would apply to a listed issuer's compensation committee or, in the absence of such a committee, any other board committee that performs functions typically performed by a compensation committee, including oversight of executive compensation. Proposed Rule 10C–1(b), however, would not require the independence listing requirements to apply to members of the board who oversee executive compensation in the absence of a board committee.[25]

b. Comments on the Proposed Rule

Comments on this proposal were generally favorable. Many commentators supported the functional approach of the proposed rule, which would require compensation committee independence listing standards to apply to any board committee charged with oversight of executive compensation, regardless of its formal title.[26] In response to our request for comment on whether we should direct the exchanges to apply the proposed rule's requirements to directors who oversee executive compensation matters in the absence of a formal committee structure, several commentators recommended that we do so,[27] and two of these commentators suggested that such a requirement would help ensure that companies could not rely on technicalities or loopholes to avoid independent director oversight of executive compensation.[28] Another commentator, however, argued that the final rule should not apply to independent directors who determine, or recommend to the board, executive compensation matters in the absence of a formal committee structure.[29] This commentator believed that broadening the scope of the rule to apply to a group of directors who determine executive compensation in lieu of a formal committee is not clearly mandated by Section 10C and would burden listed issuers that do not have a board committee overseeing executive compensation, without necessarily improving their oversight of executive compensation.[30]

In the Proposing Release, we requested comment on whether the exchanges should be prohibited from listing issuers that do not have compensation committees. Several commentators supported the concept of mandatory compensation committees for listed issuers, on the basis that executive compensation deserves special, ongoing attention by a dedicated working group of the board; a committee structure may promote increased board expertise on compensation; and having a formal committee would help promote accountability to shareholders.[31] Several other commentators opposed such requirements, arguing that the exchanges should be allowed broad discretion on how listed issuers determine compensation matters.[32]

c. Final Rule

After considering the comments, we are adopting Rule 10C–1(b) substantially as proposed. Under the final rule, the exchanges will be directed to adopt listing standards that apply to any committee of the board that performs functions typically performed by a compensation committee, including oversight of executive compensation, whether or not such committee also

statements of the issuer; and * * * if no such committee exists with respect to an issuer, the entire board of directors of the issuer.''

[20] There are some exchanges registered under Section 6(a) of the Exchange Act that have not adopted listing standards that require executive compensation determinations for listed issuers to be made or recommended by an independent compensation committee or independent directors. However, these exchanges, which include the BOX Options Exchange, International Securities Exchange, EDGA Exchange, EDGX Exchange, BATS Y-Exchange, and C2 Options Exchange, currently either trade securities only pursuant to unlisted trading privileges or trade only standardized options. In addition, the listing standards of certain exchanges that are registered with the Commission for the purpose of trading security futures do not address executive compensation matters. See Section II.B.1, below, for a discussion of these types of exchanges.

[21] *See* NYSE Listed Company Manual Section 303A.05. Section 303A.05 permits a listed issuer's board to allocate the responsibilities of the compensation committee to another committee, provided that the committee is composed entirely of independent directors and has a committee charter. The NYSE exempts certain issuers from this requirement, including controlled companies, limited partnerships, companies in bankruptcy, and closed-end and open-end management investment companies registered under the Investment Company Act. *See* NYSE Listed Company Manual Section 303A.00.

[22] *See* Nasdaq Rule 5605(d). Based on data supplied by Nasdaq, we understand that fewer than 2% of its listed issuers utilize the alternative of having independent board members, and not a committee, oversee compensation. *See also* Nasdaq IM 5605–6 (stating that the Nasdaq rule ''is intended to provide flexibility for a [c]ompany to choose an appropriate board structure and to reduce resource burdens, while ensuring [i]ndependent [d]irector control of compensation decisions.''). Nasdaq exempts certain issuers from this requirement, including asset-backed issuers and other passive issuers, cooperatives, limited partnerships, management investment companies registered under the Investment Company Act, and controlled companies. *See* Nasdaq Rules 5615(a) and 5615(c)(2).

[23] *See* NYSE Arca Rule 5.3(k)(4); National Stock Exchange Rule 15.5(d)(5); and NASDAQ OMX PHLX Rule 867.05.

[24] *See* NASDAQ OMX BX Rule 4350(c)(3); NYSE Amex Company Guide Section 805; Chicago Board Options Exchange Rule 31.10; Chicago Stock Exchange Article 22, Rules 19(d) and 21; and BATS Exchange Rule 14.10(c)(4).

[25] As noted, to the extent no board committee is authorized to oversee executive compensation, under applicable listing standards, board determinations with respect to executive compensation matters may be made by the full board with only independent directors participating. In such situations, under state corporate law, we understand that action by the independent directors would generally be considered action by the full board, not action by a committee.

[26] *See, e.g.,* letters from Chris Barnard (''Barnard''), the Chartered Financial Analyst Institute (''CFA'') and Railpen Investments (''Railpen'').

[27] *See, e.g.,* letters from Barnard, Better Markets Inc. (''Better Markets''), CFA, Georg Merkl (''Merkl''), National Association of Corporate Directors (''NACD'') and Railpen.

[28] *See* letters from NACD and Railpen.

[29] *See* letter from the American Bar Association, Business Law Section (''ABA'').

[30] This commentator also noted that, ''[a]s a practical matter, we understand that most listed companies that are accelerated filers under the Exchange Act, and many listed companies that are smaller reporting companies, already have compensation committees or committees performing the functions of compensation committees.'' *Id.*

[31] *See* letters from the American Federation of Labor and Congress of Industrial Organizations (''AFL–CIO''), the Council of Institutional Investors (''CII''), Merkl and the Ohio Public Employees' Retirement System (''OPERS'').

[32] *See* letters from ABA, CFA and NACD.

performs other functions or is formally designated as a compensation committee.[33] In addition, the listing standards adopted by the exchanges must also apply the director independence requirements of Rule 10C–1(b)(1), the requirements relating to consideration of a compensation adviser's independence in Rule 10C–1(b)(4), and the requirements relating to responsibility for the appointment, compensation and oversight of compensation advisers in Rules 10C–1(b)(2)(ii) and (iii) to the members of a listed issuer's board of directors who, in the absence of a board committee, oversee executive compensation matters on behalf of the board of directors. We believe this approach is an appropriate way to implement Section 10C. The listing standards are intended to benefit investors by requiring that the independent directors of a listed issuer oversee executive compensation matters, consider independence criteria before retaining compensation advisers and have responsibility for the appointment, compensation and oversight of these advisers. We believe it would benefit investors to implement Section 10C in a manner that does not allow listed issuers to avoid these listing standards by simply not having a compensation committee or another board committee oversee executive compensation matters.

We have determined not to require the exchanges to apply the listing standards relating to the compensation committee's authority to retain compensation advisers, Rule 10C–1(b)(2)(i), or required funding for payment of such advisers to directors who oversee executive compensation matters outside of the structure of a formal board committee, Rule 10C–1(b)(3). As noted above, we understand that action by independent directors acting outside of a formal committee structure would generally be considered action by the full board of directors. As a result, we believe it is unnecessary to apply these requirements to directors acting outside of a formal committee structure, as they retain all the powers of the board of directors in making executive compensation determinations.

We are implementing this change by defining the term ''compensation committee'' so that it includes, for all purposes other than the requirements relating to the authority to retain compensation advisers in Rule 10C–1(b)(2)(i) and required funding for payment of such advisers in Rule 10C–1(b)(3), the members of the board of directors who oversee executive compensation matters on behalf of the board of directors in the absence of a formal committee. For ease of reference throughout this release, in our discussion of the final rules we are adopting, references to an issuer's ''compensation committee'' include any committee of the board that performs functions typically performed by a compensation committee, including oversight of executive compensation, whether or not formally designated as a ''compensation committee,'' as well as, to the extent applicable, those members of a listed issuer's board of directors who oversee executive compensation matters on behalf of the board of directors in the absence of such a committee.

The final rule will not require a listed issuer to have a compensation committee or a committee that performs functions typically assigned to a compensation committee. We believe this aspect of the final rule is consistent with the requirements of Section 10C, which does not direct us to require such a committee. Moreover, in light of our determination to apply the requirements for director independence, consideration of adviser independence, and responsibility for the appointment, compensation and oversight of compensation advisers to those members of a listed issuer's board of directors who oversee executive compensation matters on behalf of the board of directors in the absence of a formal committee, there will be little difference between the requirements applicable to listed issuers that do not have compensation committees as compared to those applicable to issuers that do have compensation committees.

2. Independence Requirements

Proposed Rule 10C–1(b)(1) would require each member of a listed issuer's compensation committee to be a member of the board of directors and to be independent. We proposed to require that the exchanges develop a definition of independence applicable to compensation committee members after considering relevant factors, including, but not limited to, the two factors enumerated in Section 10C(a)(3). We are adopting these requirements as proposed, except that, as discussed above, this aspect of the final rule will also apply to those members of a listed issuer's board of directors who oversee executive compensation matters on behalf of the board of directors in the absence of a board committee.

a. Proposed Rule

Most exchanges that list equity securities already require directors on compensation committees or directors determining or recommending executive compensation matters to be ''independent'' under their general independence standards. Although independence requirements and standards vary somewhat among the different exchanges, listing standards generally prescribe certain bright-line independence tests (including restrictions on compensation, employment and familial or other relationships with the listed issuer or the executive officers of the listed issuer that could interfere with the exercise of independent judgment) that directors must meet in order to be considered independent.[34] For example, both NYSE and Nasdaq rules preclude a finding of independence if the director is or recently was employed by the listed issuer, the director's immediate family member is or recently was employed as an executive officer of the listed issuer, or the director or director's family member received compensation from the listed issuer in excess of specified limits.[35] In addition, under both NYSE and Nasdaq rules, directors may be disqualified based on their or their family members' relationships with a listed issuer's auditor, affiliation with entities that have material business relationships with the listed issuer, or employment at a company whose compensation committee includes any of the listed issuer's executive officers.[36] We note, however, that with the exception of audit committee membership requirements, stock ownership alone will not automatically preclude a director from being considered independent under either NYSE or Nasdaq listing standards.[37] The NYSE and Nasdaq also require their listed issuers' boards to affirmatively determine that each independent director either, in NYSE's case, has no material relationship with the issuer[38] or, in Nasdaq's case, has no relationship which, in the opinion of the issuer's board of directors, would interfere with the director's exercise of independent judgment in carrying out his or her

[33] For example, if a listed issuer has a ''corporate governance committee'' or a ''human resources committee,'' the responsibilities of which include, among other matters, oversight of executive compensation, such committee will be subject to the compensation committee listing requirements of the applicable exchange.

[34] *See* NYSE Listed Company Manual Section 303A.02(b); Nasdaq Rule 5605(a)(2).

[35] *See id.*

[36] *See id.*

[37] *See* Commentary to NYSE Listed Company Manual Section 303A.02(a); Nasdaq Rule 5605; Nasdaq IM–5605.

[38] *See* NYSE Rule 303A.02(a).

responsibilities.[39] The other exchanges have similar requirements.[40]

In addition to meeting exchange listing standards, there are other reasons for members of the compensation committee to be independent. For example, in order for a securities transaction between an issuer and one of its officers or directors to be exempt from short-swing profit liability under Section 16(b) of the Exchange Act, the transaction must be approved by the full board of directors or by a committee of the board that is composed solely of two or more ''Non-Employee Directors,'' as defined in Exchange Act Rule 16b–3(b)(3).[41] We understand that many issuers use their independent compensation committees to avail themselves of this exemption.[42] Similarly, if an issuer wishes to preserve the tax deductibility of the amounts of certain awards paid to executive officers, among other things, the performance goals of such awards must be determined by a compensation committee composed of two or more ''outside directors,'' as defined in Section 162(m) of the Internal Revenue Code.[43] The definitions of ''Non-Employee Director'' and ''outside director'' are similar to the exchanges' definitions of independent director.

The proposed rule would direct the exchanges to develop a definition of independence applicable to compensation committee members after considering relevant factors, including, but not limited to, a director's source of compensation, including any consulting, advisory or other compensatory fee paid by the issuer to such director, and whether a director is affiliated with the issuer, a subsidiary of the issuer, or an affiliate of a subsidiary of the issuer. We did not propose to specify any additional factors that the exchanges must consider in determining independence requirements for members of compensation committees.

In proposing Rule 10C–1(b)(1), we considered the similarities and differences between Section 952 of the Act and Section 301 of the Sarbanes-Oxley Act of 2002.[44] Section 301 of the Sarbanes-Oxley Act added Section 10A(m)(1) to the Exchange Act,[45] which required the Commission to direct the exchanges to prescribe independence requirements for audit committee members. Although the independence factors in Section 10C(a)(1) are similar to those in Section 10A(m)(1)—and indeed, Section 952 of the Act essentially provides the compensation committee counterpart to the audit committee requirements of Section 301 of the Sarbanes-Oxley Act—one significant difference is that Section 10C(a) requires only that the exchanges ''*consider* relevant factors'' (emphasis added), which include the source of compensation and any affiliate relationship, in developing independence standards for compensation committee members, whereas Section 10A(m) expressly states that certain relationships preclude independence: An audit committee member ''*may not,* other than in his or her capacity as a member of the audit committee * * * [a]ccept any consulting, advisory, or other compensatory fee from the issuer; or [b]e an affiliated person of the issuer or any subsidiary thereof'' (emphasis added).[46]

As a result, we interpret Section 10C as providing the exchanges more discretion to determine the standards of independence that compensation committee members are required to meet than they are provided under Section 10A with respect to audit committee members. Section 10A(m) prescribes minimum criteria for the independence of audit committee members. In contrast, Section 10C gives the exchanges the flexibility to establish their own minimum independence criteria for compensation committee members after considering relevant factors, including the two enumerated in Section 10C(a)(3). Accordingly, the proposed rule would allow each exchange to establish its own independence definition, subject to Commission review and approval pursuant to Section 19(b) of the Exchange Act, provided the exchange considers relevant factors in establishing its own standards, including those specified in Section 10C(a)(3).

b. Comments on the Proposed Rule

Comments on this proposal were generally favorable. Many commentators supported permitting the exchanges to establish their own independence criteria for compensation committee members, provided they consider the statutorily-required factors.[47] One commentator claimed that this approach would utilize the relative strengths and experiences of the exchanges by avoiding a ''one size fits all'' approach and could be more conducive to responding quickly to changes in corporate governance.[48] Another commentator noted that the proposal permitted each exchange to develop more finely tuned listing rules that

[39] *See* Nasdaq Rule 4200(a)(15).

[40] *See, e.g.,* NYSE Arca Rule 5.3(k)(1) and NYSE AMEX Company Guide Section 803.A.02.

[41] As defined in Exchange Act Rule 16b–3(b)(3)(i) [17 CFR 240.16b–3(b)(3)(i)], a ''Non-Employee Director'' is a director who is not currently an officer (as defined in Rule 16a–1(f)) of the issuer or a parent or subsidiary of the issuer, or otherwise currently employed by the issuer or a parent or subsidiary of the issuer; does not receive compensation, either directly or indirectly, from the issuer or a parent or subsidiary of the issuer for services rendered as a consultant or in any capacity other than as a director, except for an amount that does not exceed the dollar amount for which disclosure would be required pursuant to Item 404(a) of Regulation S–K; and does not possess an interest in any other transaction for which disclosure would be required pursuant to Item 404(a) of Regulation S–K. In addition, Rule 16b–3(b)(3)(ii) provides that a Non-Employee Director of a closed-end investment company is a director who is not an ''interested person'' of the issuer, as that term is defined in Section 2(a)(19) of the Investment Company Act [15 U.S.C. 80a–2(a)(19)].

[42] *See* letter from Sullivan & Cromwell LLP to Facilitating Shareholder Director Nominations, Release No. 34–60089, available at *http://www.sec.gov/comments/s7-10-09/s71009-430.pdf.* (''In our experience, many compensation committee charters require their members to meet the requirements of Rule 16b–3 and Section 162(m).''); Ira G. Bogner & Michael Krasnovsky, ''Exchange Rules Impact Compensation Committee Composition,'' The Metropolitan Corporate Counsel, Apr. 2004, at 17 (''Most compensation committees of public companies include at least two directors that are 'outside directors' under Section 162(m) of the Internal Revenue Code * * * and 'non-employee directors' under Rule 16b–3 of the Securities Exchange Act * * *.'').

[43] A director is an ''outside director'' if the director (A) is not a current employee of the publicly held corporation; (B) is not a former employee of the publicly held corporation who receives compensation for prior services (other than benefits under a tax-qualified retirement plan) during the taxable year; (C) has not been an officer of the publicly held corporation; and (D) does not receive remuneration from the publicly held corporation, either directly or indirectly, in any capacity other than as a director. For this purpose, remuneration includes any payment in exchange for goods or services. Section 162(m) of the Internal Revenue Code of 1986, as amended. Treas. Reg. Section 1.162–27(e)(3).

[44] Public Law 107–204, 116 Stat. 745 (2002).

[45] 15 U.S.C. 78j–1(m)(1).

[46] *See* Section 10A(m) of the Exchange Act. Exchange Act Rule 10A–3 states that in order to be considered ''independent,'' an audit committee member ''may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee * * * [a]ccept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer or any subsidiary thereof * * *.'' For non-investment company issuers, the audit committee member also cannot be an affiliated person of the issuer or its subsidiaries. For investment company issuers, the audit committee member cannot be an ''interested person'' of the issuer as defined in Section 2(a)(19) of the Investment Company Act.

[47] *See, e.g.,* letters from ABA, Barnard, Sanjai Bhagat, et al. (''Bhagat''), the Center on Executive Compensation (''CEC''), CFA, Davis Polk & Wardwell LLP (''Davis Polk''), MarkWest Energy Partners, L.P. (''MarkWest''), NYSE Euronext (''NYSE''), Pfizer Inc. (''Pfizer'') and Sullivan & Cromwell LLP (''S&C'').

[48] *See* letter from MarkWest.

reflect the particular characteristics of each exchange's listed companies.[49]

Allowing the exchanges the latitude to establish their own independence criteria concerned some commentators, however.[50] These commentators cautioned against permitting the exchanges to establish their own independence criteria and argued in support of a uniform definition of independence across all exchanges.[51] One of these commentators claimed that uniform requirements would serve as a deterrent to engaging in a ''race to the bottom.'' [52] Another commentator recommended that the exchanges' independence criteria should preclude a finding of independence if a director fails to meet the definitions of an ''outside'' director under Section 162(m) of the Internal Revenue Code or a ''non-employee'' director under Exchange Act Rule 16b–3(b)(3); is a party to a related party transaction that must be disclosed pursuant to Item 404 of Regulation S–K; or has an immediate family member who is employed by the company.[53]

Some commentators urged us to require the exchanges to consider additional factors in developing a definition of independence.[54] Several commentators advocated that we should require the exchanges to include business or personal relationships between a compensation committee member and executive officers of the issuer as factors for consideration,[55] as well as board interlocks.[56] Another commentator believed that mandatory factors for consideration should include linkages between a director's family members and the company or its affiliates and a director's relationships with other directors.[57] One commentator believed that, in setting independence standards for compensation committee members, the exchanges should be required to consider all factors relevant to assessing the independence of a board member, including personal, family and business relationships, and all other factors that might compromise a board member's judgment on matters relating to executive compensation.[58]

Three commentators, including the NYSE, stated that we should not specify additional mandatory factors that the exchanges must consider in developing a definition of independence applicable to compensation committee members.[59] In particular, the NYSE expressed concern that if the final rule specifies additional mandatory factors for consideration, such factors would be understood by the exchanges and by many boards of directors as the Commission's determination that such relationships compromise director independence, which would thereby effectively preempt the review of compensation committee independence standards that the exchanges would be required to undertake under the rule.[60]

In the Proposing Release, we noted the concern of several commentators [61] that our rules implementing Section 10C not prohibit directors affiliated with significant investors (such as private equity funds and venture capital firms) from serving on compensation committees. We requested comment on whether a director affiliated with a shareholder with a significant ownership interest who is otherwise independent would be sufficiently independent for the purpose of serving on the compensation committee. Many commentators advocated that a significant shareholder's stock ownership alone should not preclude directors affiliated with the significant shareholder from serving on an issuer's compensation committee.[62] A number of these commentators noted that equity ownership by directors serves to align the directors' interests with those of the shareholders with respect to compensation matters.[63] According to one commentator, private equity funds typically have a strong institutional belief in the importance of appropriately structured and reasonable compensation arrangements, and the directors elected by such funds are highly incentivized to rigorously oversee compensation arrangements because the funds' income, success and reputations are dependent on creating value for shareholders.[64] This commentator also noted that, while private equity funds may seek to create shareholder value by strengthening or replacing the management team of a portfolio company, such funds rarely appoint partners or employees of their affiliated private equity firms to serve as executives of portfolio companies.[65]

One commentator did not believe that directors affiliated with large shareholders should be permitted to serve on compensation committees, noting that situations could arise where the director's obligation to act in the best interest of all shareholders would conflict with the director's or large shareholder's own interest.[66] Two additional commentators noted that private equity and venture capital firms may engage in significant transactions with an issuer, and urged that all ties to the company be considered in evaluating the independence of directors affiliated with significant shareowners.[67]

Our proposed rule would require the exchanges to consider current relationships between the issuer and the compensation committee member, and we requested comment on whether relationships prior to a director's appointment to the compensation committee or, for directors already serving as compensation committee members when the new listing standards take effect, prior to the effective date of the new listing standards, should also be considered. Only two commentators expressed support for establishing any such ''look-back'' period.[68] One commentator, although not supporting a look-back period, believed that the decision of whether to require one should be determined not by the Commission but

[49] *See* letter from ABA (noting that ''the average board size of an S&P 100 company (which are primarily listed on the NYSE) is approximately 50% larger than the average board size of a Silicon Valley 150 company (which are primarily listed on Nasdaq'' and that ''[i]nvestors in these disparate categories of companies have meaningfully different expectations and interests in the governance context'').

[50] *See, e.g.,* letters from the American Federation of State, County and Municipal Employees (''AFSCME''), California Public Employees' Retirement System (''CalPERS''), the Colorado Public Employees' Retirement Association (''COPERA''), OPERS and USS.

[51] *See* letters from CalPERS, Railpen and USS.

[52] *See* letter from USS.

[53] *See* letter from AFL–CIO.

[54] *See, e.g.,* letters from AFSCME, Better Markets, CFA, CII, the State Board of Administration of Florida (''FLSBA'') and UAW Retiree Medical Benefits Trust (''UAW'').

[55] *See, e.g.,* letters from AFL–CIO, AFSCME, CFA, CII, FLSBA and UAW.

[56] *See, e.g.,* letters from AFSCME, CII, FLSBA and UAW.

[57] *See* letter from CII.

[58] *See* letter from Better Markets.

[59] *See* letters from ABA, NYSE and the Society of Corporate Secretaries and Governance Professionals (''SCSGP'').

[60] *See* letter from NYSE.

[61] To facilitate public input on the Act, the Commission has provided a series of email links, organized by topic, on its Web site at *http://www.sec.gov/spotlight/regreformcomments.shtml.* The public comments we received on Section 952 of the Act before we issued the Proposing Release are available on our Web site at *http://www.sec.gov/comments/df-title-ix/executive-compensation/executive-compensation.shtml.* Several of those commentators suggested that stock ownership alone should not automatically disqualify a board member from serving as an independent director on the compensation committee. *See, e.g.,* letters from ABA, Brian Foley & Company, Inc., Compensia, Davis Polk and Frederic W. Cook & Co., Inc. (''Frederic Cook'').

[62] *See, e.g.,* letters from ABA, AFSCME, Bhagat, CEC, Davis Polk, Debevoise, Robert J. Jackson (''Jackson''), the Private Equity Growth Capital Council (''PEGCC'') and SCSGP.

[63] *See, e.g.,* letters from CEC and Davis Polk.

[64] *See* letter from PEGCC.

[65] *See id.*

[66] *See* letter from Barnard.

[67] *See* letters from AFSCME and UAW.

[68] *See* letters from Better Markets and CFA.

by the exchanges.[69] Other commentators argued that a look-back period was not necessary because the two largest exchanges (NYSE and Nasdaq) currently impose look-back requirements on listed issuers in their standards regarding director independence.[70]

c. Final Rule

After consideration of the comments, we are adopting the requirements as proposed, except that we are also extending them to apply to those members of a listed issuer's board of directors who oversee executive compensation matters on behalf of the board of directors in the absence of a board committee. Under the final rule, the exchanges will be directed to establish listing standards requiring each member of a listed issuer's compensation committee to be a member of the board of directors and to be independent. The final rule does not require that exchanges establish a uniform definition of independence. We believe this approach is consistent with the mandate in Section 10C(a)(3). Further, given the wide variety of issuers that are listed on exchanges, we believe that the exchanges should be provided with flexibility to develop independence requirements appropriate for the issuers listed on each exchange and consistent with the requirements of Rule 10C–1(b)(1). Although this provides the exchanges with flexibility to develop the appropriate independence requirements, as discussed below, the independence requirements developed by the exchanges will be subject to review and final Commission approval pursuant to Section 19(b) of the Exchange Act.

In developing their own definitions of independence applicable to compensation committee members, the exchanges will be required to consider relevant factors, including, but not limited to:

- A director's source of compensation, including any consulting, advisory or compensatory fee paid by the issuer; and
- Whether a director is affiliated with the issuer, a subsidiary of the issuer, or an affiliate of a subsidiary of the issuer.

The final rule does not specify any additional factors that the exchanges must consider in determining independence requirements for compensation committee members, nor does the final rule prescribe any standards or relationships that will automatically preclude a finding of independence. Because the rule's relevant factors cover the same matters as the prohibitions in Section 10A(m)'s definition of audit committee independence, we expect the exchanges to consider whether those prohibitions should also apply to compensation committee members. However, consistent with Section 10C, the exchanges are not required to adopt those prohibitions in their requirements and will have flexibility to consider other factors in developing their requirements.

As noted above and in the Proposing Release, Section 10C of the Exchange Act does not require that the exchanges prohibit all affiliates from serving on a compensation committee. In establishing their independence requirements, the exchanges may determine that, even though affiliated directors are not allowed to serve on audit committees, such a blanket prohibition would be inappropriate for compensation committees, and certain affiliates, such as representatives of significant shareholders, should be permitted to serve. However, in response to concerns noted by some commentators that significant shareholders may have other relationships with listed companies that would result in such shareholders' interests not being aligned with those of other shareholders, we emphasize that it is important for exchanges to consider other ties between a listed issuer and a director, in addition to share ownership, that might impair the director's judgment as a member of the compensation committee. For example, the exchanges might conclude that personal or business relationships between members of the compensation committee and the listed issuer's executive officers should be addressed in the definition of independence.[71]

Although each exchange must consider affiliate relationships in establishing a definition of compensation committee independence, there is no requirement to adopt listing standards precluding compensation committee membership based on any specific relationships. Accordingly, we do not believe it is necessary to separately define the term ''affiliate'' for purposes of Rule 10C–1. In addition, the final rule does not impose any required look-back periods that must be incorporated in exchange listing standards relating to the independence of compensation committee members. We agree with commentators that the determination of whether to impose a look-back period in evaluating compensation committee member independence should be left to the exchanges and note that the exchanges already incorporate various look-back periods in their general criteria for director independence. In this respect, the final rule is similar to Exchange Act Rule 10A–3, which did not impose a mandatory look-back period for evaluating audit committee member independence in light of look-back periods already required by the exchanges for evaluating director independence generally.

Consistent with the proposal, the exchanges' definitions of independence for compensation committee members will be implemented through proposed rule changes that the exchanges will be required to file pursuant to Section 19(b) of the Exchange Act, which are subject to the Commission's review and approval.[72] Consistent with the proposal, Rule 10C–1(a)(4) will require that each proposed rule change submission include, in addition to any other information required under Section 19(b) of the Exchange Act and the rules thereunder: a review of whether and how the proposed listing standards satisfy the requirements of the final rule; a discussion of the exchange's consideration of factors relevant to compensation committee independence; and the definition of independence applicable to compensation committee members that the exchange proposes to adopt or retain in light of such review.[73] The Commission will then consider,

[69] *See* letter from Davis Polk.

[70] *See* letters from ABA and CEC.

[71] As the NYSE Listed Company Manual observes, ''the concern is independence from management.'' *See* Commentary to NYSE Rule 303A.02(a). See also the Commentary to NYSE Rule 303A.02(a), which discusses the wide range of circumstances that could signal conflicts of interest or that might bear on the materiality of the relationship between the director and the issuer.

[72] The standard of review for approving proposed exchange listing standards is found in Section 19(b)(2)(C) of the Exchange Act, which provides that ''[t]he Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of this title and the rules and regulations issued under this title that are applicable to such organization.'' Under Section 6(b) of the Exchange Act, the rules of an exchange must be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.''

[73] A submission would be required even if an exchange believes that its existing rules satisfy the requirements of Rule 10C–1. In such a circumstance, the exchange's rule submission would explain how the exchange's existing rules satisfy the requirements of Rule 10C–1, and the submission would be subject to the Commission's review and approval.

prior to final approval, whether the exchanges considered the relevant factors outlined in Section 10C(a) and whether the exchanges' proposed rule changes are consistent with the requirements of Section 6(b) and Section 10C of the Exchange Act.

3. Authority To Retain Compensation Advisers; Responsibilities; and Funding

Section 10C(c)(1) of the Exchange Act provides that the compensation committee of a listed issuer may, in its sole discretion, retain or obtain the advice of a ''compensation consultant,'' [74] and Section 10C(d) extends this authority to ''independent legal counsel and other advisers.'' [75] Both sections also provide that the compensation committee shall be directly responsible for the appointment, compensation and oversight of the work of compensation advisers. Sections 10C(c)(1)(C) and 10C(d)(3) provide that the compensation committee's authority to retain, and responsibility for overseeing the work of, compensation advisers may not be construed to require the compensation committee to implement or act consistently with the advice or recommendations of a compensation adviser or to affect the ability or obligation of the compensation committee to exercise its own judgment in fulfillment of its duties. To ensure that the listed issuer's compensation committee has the necessary funds to pay for such advisers, Section 10C(e) provides that a listed issuer shall provide ''appropriate funding,'' as determined by the compensation committee, for payment of ''reasonable compensation'' to compensation advisers.[76]

We proposed Rules 10C–1(b)(2) and (3) to implement these statutory requirements. We are adopting these requirements substantially as proposed.

a. Proposed Rule

Proposed Rule 10C–1(b)(2) would implement Sections 10C(c)(1) and (d) by repeating the provisions set forth in those sections regarding the compensation committee's authority to retain or obtain a compensation adviser, its direct responsibility for the appointment, compensation and oversight of the work of any compensation adviser, and the related rules of construction. In addition, proposed Rule 10C–1(b)(3) would implement Section 10C(e) by repeating the provisions set forth in that section regarding the requirement to provide appropriate funding for the payment of reasonable compensation, as determined by the compensation committee, to compensation advisers.

In the Proposing Release, we noted that while the statute provides that compensation committees of listed issuers shall have the express authority to hire ''independent legal counsel,'' the statute does not require that they do so. Similar to our interpretation [77] of Section 10A(m) of the Exchange Act, which gave the audit committee authority to engage ''independent legal counsel,'' [78] we do not construe the requirements related to independent legal counsel and other advisers as set forth in Section 10C(d)(1) of the Exchange Act as requiring a compensation committee to retain independent legal counsel or as precluding a compensation committee from retaining non-independent legal counsel or obtaining advice from in-house counsel or outside counsel retained by the issuer or management.

b. Comments on the Proposed Rule

Many commentators expressed general support for the proposed requirements.[79] While several commentators suggested that compensation committees should use, or be permitted to use, only independent compensation advisers,[80] other commentators agreed with the interpretive position expressed in the Proposing Release that the statute does not require a compensation committee to retain independent legal counsel or preclude the compensation committee from retaining non-independent legal counsel or obtaining advice from in-house counsel or counsel retained by the issuer or management.[81] One commentator noted that the proposed rule should not be interpreted to ''apply to or interfere with a compensation committee's dealings with legal counsel from whom it may obtain advice, but which was not retained or selected by the committee, such as in-house and company counsel. Thus, the proposed language * * * should be clear that the requirement that independent legal counsel and other advisers be subject to the direct oversight of the compensation committee applies only to such counsel and advisors who are specifically and separately retained by the compensation committee.'' [82] This commentator thought it would be helpful to include the Commission's interpretation of the statute in the text of the rule,[83] although one commentator viewed such clarification as unnecessary.[84] One commentator asked that we clarify whether the interpretive view expressed in the Proposing Release would apply equally to compensation consultants—i.e., whether a compensation committee could obtain advice from compensation consultants retained by management.[85]

We asked for comment on whether we should define what constitutes an ''independent legal counsel.'' One commentator stated, without explanation, that it would not be necessary for us to define what constitutes an ''independent legal counsel.'' [86] Another commentator believed that we should provide more guidance for issuers to determine whether legal counsel is ''independent,'' so that listed issuers would have greater assurance that they are in compliance with Exchange Act Section 10C(d)(1).[87]

c. Final Rule

We are adopting the rule substantially as proposed, with modifications to clarify that the scope of the requirements is limited to only those compensation advisers retained by the compensation committee and to apply the requirement that the compensation committee be directly responsible for the appointment, compensation and oversight of the work of any compensation adviser retained by the compensation committee to those members of a listed issuer's board of directors who oversee executive compensation matters on behalf of the board of directors in the absence of a board committee. Under the final rules, the exchanges will be directed to adopt listing standards that provide that:

- The compensation committee may, in its sole discretion, retain or obtain the advice of a compensation adviser;

[74] *See* Exchange Act Section 10C(c)(1).

[75] *See* Exchange Act Section 10C(d)(1).

[76] *See* Exchange Act Section 10C(e).

[77] *See* Standards Relating to Listed Company Audit Committees, Release No. 33–8220 (Apr. 9, 2003) [68 FR 18788], n. 114 (''As proposed, the requirement does not preclude access to or advice from the company's internal counsel or regular outside counsel. It also does not require an audit committee to retain independent counsel.'').

[78] *See* Exchange Act Section 10A(m)(5)(''Each audit committee shall have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.'').

[79] *See, e.g.,* letters from Barnard, CalSTRS, Davis Polk, Pfizer and SCSGP.

[80] *See* letters from AFL–CIO, Better Markets, CalPERS, CFA Institute, CII, FLSBA and Railpen.

[81] *See, e.g.,* letters from ABA, CEC (noting that ''the compensation committee is in the best position to determine whether a particular advisor would be an appropriate advisor following a review of all factors and subject to appropriate disclosure'') and Merkl.

[82] *See* letter from ABA.

[83] *See id.*

[84] *See* letter from Merkl.

[85] *See* letter from Carl Struby.

[86] *See* letter from Merkl.

[87] *See* letter from Robert M. Fields (Apr. 6, 2011)(''Fields'').

• The compensation committee, which for this purpose includes those members of a listed issuer's board of directors who oversee executive compensation matters on behalf of the board of directors in the absence of a board committee, shall be directly responsible for the appointment, compensation and oversight of the work of any compensation adviser retained by the compensation committee; and

• Each listed issuer must provide for appropriate funding for payment of reasonable compensation, as determined by the compensation committee, to any compensation adviser retained by the compensation committee.

Consistent with Sections 10C(c)(1)(c) and 10C(d)(3), the final rule may not be construed to require the compensation committee to implement or act consistently with the advice or recommendations of any adviser to the compensation committee or to affect the ability or obligation of a compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee.

Consistent with our interpretation of Section 10C, the final rule does not require compensation committees to retain or obtain advice only from independent advisers. A listed issuer's compensation committee may receive advice from non-independent counsel, such as in-house counsel or outside counsel retained by management, or from a non-independent compensation consultant or other adviser, including those engaged by management. The final rule does not require a compensation committee to be directly responsible for the appointment, compensation or oversight of compensation advisers that are not retained by the compensation committee, such as compensation consultants or legal counsel retained by management. Rather, the direct responsibility to oversee compensation advisers applies only to those advisers retained by a compensation committee, and the obligation of the issuer to provide for appropriate funding applies only to those advisers so retained. Finally, in light of the provisions of our final rule and the fact that commentators did not urge us to define ''independent legal counsel,'' we do not believe such a definition is needed. [88] We note that the final rule requires the payment of reasonable compensation not only to independent legal counsel but also to ''any other adviser'' to the compensation committee, which includes any compensation advisers retained by the compensation committee, such as attorneys and consultants, whether or not they are independent.

4. Compensation Adviser Independence Factors

Section 10C(b) of the Exchange Act provides that the compensation committee of a listed issuer may select a compensation adviser only after taking into consideration the five independence factors specified in Section 10C(b) as well as any other factors identified by the Commission. In accordance with Section 10C(b), these factors would apply to the selection of compensation consultants, legal counsel and other advisers to the committee. The statute does not require a compensation adviser to be independent, only that the compensation committee of a listed issuer consider the enumerated independence factors before selecting a compensation adviser. Section 10C(b)(2) specifies that the independence factors identified by the Commission must be competitively neutral [89] and include, at minimum:

• The provision of other services to the issuer by the person that employs the compensation consultant, legal counsel or other adviser;

• The amount of fees received from the issuer by the person that employs the compensation consultant, legal counsel or other adviser, as a percentage of the total revenue of the person that employs the compensation consultant, legal counsel or other adviser;

• The policies and procedures of the person that employs the compensation consultant, legal counsel or other adviser that are designed to prevent conflicts of interest;

• Any business or personal relationship of the compensation consultant, legal counsel or other adviser with a member of the compensation committee; and

• Any stock of the issuer owned by the compensation consultant, legal counsel or other adviser.

We proposed to direct the exchanges to adopt listing standards requiring the compensation committee of a listed issuer to consider the five factors enumerated in Section 10C(b) of the Exchange Act prior to selecting a compensation adviser. We are adopting the rule substantially as proposed, but with some changes in response to comments.

a. Proposed Rule

Proposed Rule 10C–1(b)(4) would direct the exchanges to adopt listing standards that require the compensation committee of a listed issuer to take into account the five factors identified in Section 10C(b)(2), in addition to any other factors identified by the relevant exchange, before selecting a compensation adviser. Under the proposed rule, the exchanges would have the ability to add other independence factors that must be considered by compensation committees. In the Proposing Release, we stated that we did not propose any additional factors because we believed that the factors set forth in Section 10C(b) are ''generally comprehensive,'' although we solicited comment as to whether there are any additional independence factors that should be taken into consideration by a listed issuer's compensation committee.[90]

As noted above and in the Proposing Release, Section 10C does not require compensation advisers to be independent—only that the compensation committee consider factors that may bear upon independence. As a result, we did not believe that it would be appropriate to establish bright-line or numerical thresholds that would affect whether or when the factors listed in Section 10C, or any additional factors, must be considered by a compensation committee. For example, we did not believe that our rules should provide that a compensation committee must consider stock owned by an adviser only if ownership exceeds a specified minimum percentage of the issuer's stock, or that a committee must consider the amount of revenues that the issuer's business represents for an adviser only if the percentage exceeds a certain percentage of the adviser's revenues. Accordingly, proposed Rule 10C–1(b)(4) would require the listing standards developed by the exchanges to include

[88] Similarly, Exchange Act Rule 10A–3 provides that audit committees must have the authority to engage ''independent counsel'' and that listed issuers must provide for appropriate funding of such advisers. Independent counsel is not further defined in Rule 10A–3, and we do not believe that there has been any uncertainty arising from the absence of such a definition.

[89] Although there is no relevant legislative history, we assume this requirement is intended to address the concern expressed by the multi-service compensation consulting firms that the disclosure requirements the Commission adopted in 2009 are not competitively neutral because they do not address potential conflicts of interest presented by boutique consulting firms that are dependent on the revenues of a small number of clients. *See* letter from Towers Perrin, commenting on Proxy Disclosure and Solicitation Enhancements, Release No. 33–9052 (July 10, 2009), available at *http://www.sec.gov/comments/s7-13-09/s71309-90.pdf.* The list of independence factors in Section 10C(b)(2), which addresses both multi-service firm ''other services'' conflicts and boutique firm ''revenue concentration'' conflicts, is consistent with this assumption.

[90] *See* Proposing Release, 76 FR at 18972.

the independence factors set forth in the statute and incorporated into the rule without any materiality or bright-line thresholds or cutoffs.[91]

b. Comments on the Proposed Rule

Comments on this proposal were mixed. A number of commentators supported directing the exchanges to adopt listing standards that require the compensation committee to take into account the five factors enumerated in Section 10C, in addition to any other factors identified by the exchanges.[92] One multi-service compensation consulting firm believed that the five factors listed in Section 10C(b)(2) were, in total, competitively neutral, but that, on an individual basis, some of the factors were not competitively neutral.[93] This commentator suggested that we should provide an instruction to the final rules to emphasize that the factors should be considered in their totality and that no one factor should be viewed as a determinative factor of independence. Another commentator argued that the full effects of any independence factor on competition in the rapidly evolving advisory industry are not entirely knowable, and that the Commission should generally recommend factors that, when applied equally across the full spectrum of existing firms, help in achieving the goal of adviser independence.[94]

Several commentators argued that some or all of the five factors identified in Section 10C(b)(2) and included in the proposed rule were not competitively neutral.[95] Multi-service consulting firms argued that the consideration of other services provided to the issuer by the person that employs the compensation consultant was not competitively neutral as this factor would affect only multi-service firms. For their part, smaller consulting firms argued that the consideration of the amount of fees received from the issuer as a percentage of a firm's total revenues was not competitively neutral because the likelihood of revenue concentration would be greater in smaller firms.[96] Three commentators argued that our existing compensation consultant fee disclosure requirements disproportionately affect multi-service consulting firms, and suggested that we could improve the competitive neutrality of our rules by requiring competitively neutral disclosure of fees paid to all compensation consultants or advisers.[97]

Many commentators urged us to add more independence factors to the list of factors that could affect the independence of a compensation adviser.[98] Several commentators argued that we should include a comparison of the amount of fees received for providing executive compensation consulting services to the amount of fees received for providing non-executive compensation consulting services.[99] Other commentators expressed support for requiring compensation committees to consider any business or personal relationship between an executive officer of the issuer and an adviser or the person employing the compensation adviser.[100] Some commentators, however, opposed adding new factors to the list of factors identified in the proposed rule,[101] although one of these commentators acknowledged that it would advise any compensation committee evaluating the independence of a potential adviser to consider the business and personal relationships between the issuer's executive officers and the adviser or adviser's firm.[102]

In the Proposing Release, we requested comment on the application of the independence factors to different categories of advisers. Several commentators requested that we stipulate that a compensation committee conferring with or soliciting advice from the issuer's in-house or outside legal counsel would not be required to consider the independence factors with respect to such counsels.[103] These commentators believed that a compensation committee should be required to consider the independence factors only when the committee itself selects a compensation adviser, but not when it receives advice from, but does not select, an adviser.[104] Moreover, two of these commentators questioned the usefulness of the independence assessment as it relates to in-house legal counsel, outside legal counsel to an issuer or a compensation adviser retained by management, as they are not held out, or considered by the compensation committee, to be independent.[105]

On the other hand, a number of commentators argued that the compensation adviser independence requirements should apply to any legal counsel that provides advice to the compensation committee.[106] One of these commentators argued that the language of Section 10C(b)(1) is unambiguous and that the final rules should clarify that exchange listing standards must require compensation committees to consider the independence factors whenever a committee receives advice from legal counsel, regardless of whether or not the committee selected counsel.[107]

We also requested comment on whether we should include materiality, numerical or other thresholds that would limit the circumstances in which a compensation committee is required to consider the independence factors. Several commentators opposed including such materiality, numerical or other bright-line thresholds in the rule.[108] These commentators expressed concern that such thresholds may not be competitively neutral and could reduce the flexibility compensation committees have to select advisers best-suited to the issuer. A number of commentators supported a materiality threshold with respect to the stock ownership factor. One commentator suggested that consideration of this factor should be required only if an individual beneficially owns in excess of 5% of an outstanding class of an issuer's equity

[91] As noted above, the exchanges would have the ability to add other independence factors that must be considered by compensation committees, and these additional factors could include materiality or bright-line thresholds or cutoffs.

[92] *See, e.g.,* letters from ABA, Pfizer, SCSGP and USS.

[93] *See* letter from Aon Hewitt (''AON'').

[94] *See* letter from Hodak Value Advisors.

[95] *See, e.g.,* letters from Frederic Cook, Longnecker & Associates (''Longnecker''), Mercer, Steven Hall & Partners (''Steven Hall'') and Towers Watson (''Towers'').

[96] *See* letters from Frederic Cook and Longnecker.

[97] *See* letters from AON, Mercer and Towers.

[98] *See, e.g.,* letters from ABA, AFL–CIO, AFSCME and USS.

[99] *See* letters from AFL–CIO, AFSCME, Frederic Cook and UAW. *See also* letter from Steven Hall (noting that the ''requirement that a compensation committee consider the company's fees paid to a firm as a percentage of the firm's overall fees seems to overlook the more significant issue of the amount of fees the consulting firm receives for services to the compensation committee as a percentage of the total fees the firm receives including fees for other services to the company'').

[100] *See, e.g.,* letters from ABA (supporting consideration of relationships between adviser's employer and issuer's executive officers), Better Markets, Merkl (supporting consideration of relationships between either adviser or adviser's employer and issuer's executive officers), and USS (supporting consideration of relationships between adviser and issuer's executive officers). One commentator supported requiring consideration of business or personal relationships between an issuer's executive officers and the compensation adviser, but not the adviser's employer. *See* letter from Towers.

[101] *See, e.g.,* letters from AON, Meridian Compensation Partners (''Meridian''), SCSGP and Steven Hall.

[102] *See* letter from Steven Hall.

[103] *See* letters from ABA, Davis Polk, McGuire Woods and S&C.

[104] *See* letters from ABA and McGuire Woods.

[105] *See* letters from ABA and S&C.

[106] *See, e.g.,* letters from Better Markets, Robert M. Fields (Apr. 29, 2011), Richard Thalheimer and Towers.

[107] *See* letter from Towers.

[108] *See* letters from Longnecker, McGuireWoods, Meridian, SCSGP and Towers.

securities.[109] Another commentator suggested a threshold of $50,000 in fair market value or 5,000 shares of a listed issuer's stock, below which an adviser's stock ownership would not be deemed to affect his or her independence.[110] Other commentators suggested that compensation committees should be required to consider only stock owned by the lead adviser and not stock owned by other employees on the adviser's team.[111]

Comments were mixed as to whether the final rule should clarify the phrases ''provision of other services'' or ''business or personal relationships,'' as used in proposed Rule 10C–1(b)(4). Some commentators thought no further clarification of the phrase ''provision of other services'' was necessary,[112] and another commented that it ''is better to have a general principle than to have exhaustive detailed rules that may leave loopholes for services that may impair the independence of an advisory firm.'' [113] Two commentators suggested defining the phrase to expressly exclude certain services.[114] For example, one commentator suggested excluding advice related to broad-based, non-discriminatory plans or surveys.[115]

Some commentators urged that we further define the phrase ''business or personal relationship.'' [116] One commentator suggested that we should define ''business relationship'' to expressly exclude any non-commercial relationship between an adviser and a member of the issuer's compensation committee, provided that such relationship does not result in significant monetary or economic gain to either party, and that we should define ''personal relationship'' to include only familial relationships.[117] Another commentator argued that business or personal relationships that are more casual in nature may not be relevant to adviser independence and suggested limiting consideration of such relationships to those that would ''more likely than not'' have a ''material adverse effect'' on an individual's independence.[118] Two commentators thought it would be helpful if we provided examples of the types of relationships to be considered, in order to guide compensation committees as they consider the breadth of possible relationships that might impair adviser independence.[119] Another commentator thought it was unnecessary for us to further define the phrase because the ''myriad possible definitions and considerations are unlikely to be fully encompassed by such a definition.'' [120]

A few commentators also urged that we clarify the scope of individuals whose relationships would need to be considered in the context of evaluating adviser independence. One commentator recommended limiting the required consideration to the individual adviser who renders services to the compensation committee,[121] and another commentator similarly recommended limiting the required consideration to the lead consultant, counsel or adviser to the committee, but not to other members of the adviser's team serving the compensation committee.[122]

We requested comment on whether we should require disclosure of a compensation committee's process for selecting advisers. Many commentators criticized this idea, citing concerns about extending already lengthy proxy statement discussions of executive compensation and expressing doubt that additional disclosure of the process for selecting advisers would provide any useful information to investors.[123] However, some commentators thought such disclosure could be useful in providing transparency as to whether compensation committees were following the required process for selecting advisers.[124]

c. Final Rule

After considering the comments, we are adopting the requirements substantially as proposed, but with some revisions. As discussed above, this aspect of the final rule will also apply to those members of a listed issuer's board of directors who oversee executive compensation matters on behalf of the board of directors in the absence of a board committee. We have also decided to include one additional independence factor that compensation committees must consider before selecting a compensation adviser. Under the final rule, the exchanges will be directed to adopt listing standards that require a compensation committee to take into account the five factors enumerated in Section 10C(b)(2), as well as any business or personal relationships between the executive officers of the issuer and the compensation adviser or the person employing the adviser. This would include, for example, situations where the chief executive officer of an issuer and the compensation adviser have a familial relationship or where the chief executive officer and the compensation adviser (or the adviser's employer) are business partners. We agree with commentators who stated that business and personal relationships between an executive officer and a compensation adviser or a person employing the compensation adviser may potentially pose a significant conflict of interest that should be considered by the compensation committee before selecting a compensation adviser.[125]

As was proposed, the final rule does not expand the stock ownership factor to require consideration of stock owned by the person employing a compensation adviser. As we noted in the Proposing Release, we interpret ''any stock of the issuer owned by the compensation consultant, legal counsel, or other adviser'' to include shares owned by the individuals providing services to the compensation committee and their immediate family members.

Other than the additional factor described above, the final rules will not require the listing standards to mandate consideration of independence factors beyond those set forth in Section 10C(b)(2). We believe that these six factors, when taken together, are competitively neutral, as they will require compensation committees to consider a variety of factors that may bear upon the likelihood that a compensation adviser can provide independent advice to the compensation committee, but will not prohibit committees from choosing any particular adviser or type of adviser. We agree with the commentator who suggested that the factors should be considered in their totality and that no one factor should be viewed as a determinative factor of independence.[126] We do not believe it is necessary, however, to provide an instruction to this effect, as the final rule directs the exchanges to require consideration of all of the specified factors. In response to concerns echoed by a number of commentators, we emphasize that neither the Act nor our final rule requires a compensation adviser to be independent, only that the

[109] *See* letter from Steven Hall.

[110] *See* letter from ABA.

[111] *See* letters from AON and Mercer.

[112] *See* letters from AON and Towers.

[113] *See* letter from Merkl.

[114] *See* letters from Hodak and Mercer.

[115] *See* letter from Mercer.

[116] *See, e.g.,* letters from AON and Meridian.

[117] *See* letter from Meridian.

[118] *See* letter from AON.

[119] *See* letters from Merkl and Towers.

[120] *See* letter from Mercer.

[121] *See* letter from Meridian.

[122] *See* letter from Mercer (noting that the more junior members of the team rarely interact directly with the compensation committee).

[123] *See, e.g.,* letters from CFA Institute and Frederic Cook.

[124] *See, e.g.,* letter from Better Markets.

[125] *See, e.g.,* letters from ABA, Better Markets, Merkl and USS.

[126] *See* letter from AON.

compensation committee consider the enumerated independence factors before selecting a compensation adviser. Compensation committees may select any compensation adviser they prefer, including ones that are not independent, after considering the six independence factors outlined in the final rule.[127]

In response to comments,[128] we are including an instruction to the final rule to provide that a compensation committee need not consider the six independence factors before consulting with or obtaining advice from in-house counsel. Commentators noted that it is routine for in-house counsel to consult with, and provide advice to, the compensation committee on a variety of issues, such as, for example, the terms of an existing benefit plan or how a proposed employment contract would interrelate with other company agreements.[129] We agree with these commentators that, as in-house legal counsel are company employees, they are not held out to be independent. In addition, we do not believe compensation committees consider that in-house counsel serve in the same role or perform a similar function as a compensation consultant or outside legal counsel.

This instruction will not affect the obligation of a compensation committee to consider the independence of outside legal counsel or compensation consultants or other advisers retained by management or by the issuer. We believe that information gathered from an independence assessment of these categories of advisers will be useful to the compensation committee as it considers any advice that may be provided by these advisers. In addition, excluding outside legal counsel or compensation consultants retained by management or by the issuer from the required independence assessment may not be competitively neutral, since, as some commentators pointed out, they often perform the same types of services as the law firms and compensation consultants selected by the compensation committee.[130] Accordingly, we are including an instruction to the final rule that provides that a listed issuer's compensation committee is required to conduct the independence assessment outlined in Rule 10C–1(b)(4) with respect to any compensation consultant, legal counsel or other adviser that provides advice to the compensation committee, other than in-house legal counsel.

The final rule, like our proposal, does not include any materiality, numerical or other thresholds that would narrow the circumstances in which a compensation committee is required to consider the independence factors specified in the rule. We are concerned that adding materiality or other bright-line thresholds may not be competitively neutral. The absence of any such thresholds means that all facts and circumstances relevant to the six factors will be presented to the compensation committee for its consideration of the independence of a compensation adviser, and not just those factors that meet a prescribed threshold. For similar reasons, the final rule does not further define the phrases ''provision of other services'' or ''business or personal relationship.''

Consistent with the proposed rule, the final rule does not require listed issuers to describe the compensation committee's process for selecting compensation advisers pursuant to the new listing standards. We are sensitive to the concerns of commentators that adding such disclosure would increase the length of proxy statement disclosures on executive compensation without necessarily providing additional material information to investors.

5. Opportunity To Cure Defects

Section 10C(f)(2) of the Exchange Act specifies that our rules must provide for appropriate procedures for an issuer to have a reasonable opportunity to cure any defects that would be the basis for a prohibition of the listing of an issuer's securities as a result of its failure to meet the requirements set forth in Section 10C, before imposition of such prohibition.[131] To implement this requirement, we proposed Rule 10C–1(a)(3), which would require the exchanges to establish such procedures if their existing procedures are not adequate. We are adopting the rule as proposed.

a. Proposed Rule

Proposed Rule 10C–1(a)(3) would provide that the exchange listing standards required by Rule 10C–1 must allow issuers a reasonable opportunity to cure violations of the compensation committee listing requirements. The proposed rule did not set forth specific procedures for curing violations of compensation committee listing requirements, but specified that the listing standards may provide that if a member of a compensation committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the issuer to the applicable exchange, may remain a compensation committee member of the listed issuer until the earlier of the next annual shareholders' meeting of the listed issuer or one year from the occurrence of the event that caused the member to be no longer independent. Proposed Rule 10C–1(a)(3) was patterned after similar provisions contained in Exchange Act Rule 10A–3(a)(3).[132]

b. Comments on the Proposed Rule

Commentators generally supported proposed Rule 10C–1(a)(3). Two commentators favored requiring the exchanges to provide issuers the same opportunity to cure non-compliance with the compensation committee listing requirements as they have with respect to audit committee requirements.[133] In response to our request for comment on whether we should direct the exchanges to adopt specific procedures for curing non-compliance, several commentators were opposed to requiring the exchanges to establish any such specific procedures.[134] One commentator, however, urged us to direct the exchanges to establish more limited procedures for curing defects.[135]

We also requested comment as to whether listed issuers that have just completed initial public offerings should be given additional time to comply with the compensation committee independence requirements, as is permitted by Exchange Act Rule 10A–3(b)(1)(iv)(A) with respect to audit committee independence requirements. Several commentators supported providing newly listed issuers with additional time to comply with the compensation committee listing requirements.[136] The NYSE argued that the exchanges should have the flexibility to permit an issuer applying for listing in connection with an initial public offering to have additional time to comply with compensation committee requirements.[137] The NYSE also requested that we clarify that the authority the exchanges would have under Rule 10C–1(a)(3) to provide issuers an opportunity to cure defects is

[127] The listing standards do not, of course, override any duties imposed on directors by applicable state law relating to the selection of compensation advisers.

[128] *See* letters from ABA, Davis Polk and S&C.

[129] *See* letters from Davis Polk and S&C.

[130] *See* letters from Jackson and Towers.

[131] *See* Exchange Act Section 10C(f)(2).

[132] 17 CFR 240.10A–3(a)(3).

[133] *See* letters from Debevoise and CalPERS.

[134] *See, e.g.,* letters from Davis Polk and Merkl.

[135] *See* letter from Better Markets.

[136] *See, e.g.,* letters from ABA, Davis Polk, Merkl and NYSE.

[137] *See* letter from NYSE.

not limited to situations where a previously independent compensation committee member loses his or her independent status for reasons outside his or her control.[138]

c. Final Rule

After consideration of the comments, we are adopting Rule 10C–1(a)(3) as proposed. Similar to Exchange Act Rule 10A–3(a)(3), the final rule requires the exchanges to provide appropriate procedures for listed issuers to have a reasonable opportunity to cure any noncompliance with the compensation committee listing requirements that could result in the delisting of an issuer's securities. The exchanges' rules may also provide that if a member of a listed issuer's compensation committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the issuer to the applicable exchange, may remain a compensation committee member of the listed issuer until the earlier of the next annual shareholders' meeting of the listed issuer or one year from the occurrence of the event that caused the member to be no longer independent. The exchanges' authority to provide issuers an opportunity to cure defects is not limited to situations where a previously independent compensation committee member loses his or her independent status for reasons outside his or her control.

As we noted in the Proposing Release, we believe that existing listing standards and delisting procedures of most of the exchanges satisfy the requirement for there to be reasonable procedures for an issuer to have an opportunity to cure any defects on an ongoing basis. Most exchanges have already adopted procedures to provide issuers with notice and opportunity for a hearing, an opportunity for an appeal and an opportunity to cure defects before their securities are delisted.[139] Nonetheless, we expect that the rules of each exchange would provide for definite procedures and time periods for compliance with the final rule requirements to the extent they do not already do so.

We have not made any modifications to Rule 10C–1(a)(3) with respect to newly listed issuers. As discussed in more detail in Section II.B.2 of this release, in accordance with Exchange Act Section 10C(f)(3), our final rule will authorize the exchanges to exempt categories of issuers from the requirements of Section 10C. We believe this authority will allow the exchanges to craft appropriate limited exceptions from the required compensation committee listing standards for newly listed and other categories of listed issuers, subject to Commission review and approval pursuant to Section 19(b) of the Exchange Act.

B. Implementation of Listing Requirements

1. Exchanges and Securities Affected

We proposed to apply the requirements of Section 10C only to exchanges that list equity securities. In addition, the proposed rule would require that the exchanges adopt listing standards in compliance with the rule only with respect to issuers with listed equity securities. Along with the exemptions contained in Section 10C, the proposed rule would also exempt security futures products and standardized options. We are adopting the rule as proposed.

a. Proposed Rule

Section 10C(a) provides that the Commission shall direct the exchanges to prohibit the listing of any ''equity security'' of an issuer (other than several types of exempted issuers) that does not comply with the compensation committee member independence requirements. In contrast, Section 10C(f)(1), which states generally the scope of the compensation committee and compensation adviser listing requirements, provides that the Commission shall direct the national securities exchanges and national securities associations ''to prohibit the listing of *any security* of an issuer that is not in compliance with the requirements of this section'' (emphasis added).

The Senate-passed version of the bill did not distinguish between equity and non-equity securities, referencing only the prohibition against the listing of ''any security'' of an issuer not in compliance with the independence requirements.[140] The initial House-passed version would have required the Commission to adopt rules to direct the exchanges to prohibit the listing of ''any class of equity security'' of an issuer that is not in compliance with the compensation committee independence standards, as well as with any of the other provisions of that section, including the provisions relating to compensation advisers.[141] According to a press release issued by the House Financial Services Committee, this language was added during deliberations by that committee to clarify that the compensation committee independence standards would apply only to ''public companies, not to companies that have only an issue of publicly-registered debt.'' [142] Because the Senate-passed version of the bill (which did not specify ''equity'' securities) was used as the base for the conference draft, it appears that addition of ''equity'' securities in Section 10C(a) of the conference draft was deliberate. Unlike the House-passed bill, however, the final bill specifically references equity securities only in connection with compensation committee member independence requirements.

As we noted in the Proposing Release, the NYSE currently exempts issuers whose only listed securities are debt securities from the compensation committee listing requirements that apply to issuers listing equity securities.[143] In addition, Exchange Act Rule 3a12–11 exempts listed debt securities from most of the requirements in our proxy and information statement rules.[144] Finally, most, if not all, issuers with only listed debt securities, other than foreign private issuers, are privately held.[145] In light of the

[138] *See id.*

[139] *See, e.g.,* NYSE Listed Company Manual Section 801–805; Nasdaq Equity Rules 5800 Series; NYSE AMEX Company Guide Section 1009 and Part 12; Chicago Board Options Exchange Rule 31.94; Chicago Stock Exchange Article 22, Rules 4, 17A, and 22; Nasdaq OMX BX Rule 4800 series; Nasdaq OMX PHLX Rule 811. Neither NYSE Arca nor the National Stock Exchange has a rule that specifically requires listed companies to be given an opportunity to submit a plan to regain compliance with corporate governance listing standards other than audit committee requirements; issuers listed on these exchanges, however, are provided notice, an opportunity for a hearing, and an opportunity for an appeal prior to delisting. *See* NYSE Arca Rule 5.5(m); National Stock Exchange Rule 15.7 and Chapter X.

[140] *See* H.R. 4173, 111th Cong. § 952 (as passed, with amendments, by the Senate on May 20, 2010).

[141] *See* H.R. 4173, 111th Cong. § 2003 (as passed by the House of Representatives on Dec. 11, 2009).

[142] *See* Press Release, Financial Services Committee Passes Executive Compensation Reform, July 28, 2009, available at: *http://democrats.financialservices.house.gov/press/PRArticle.aspx?NewsID=520.*

[143] *See* NYSE Listed Company Manual Section 303A.00.

[144] In adopting this rule, the Commission determined that debt holders would receive sufficient protection from the indenture, the Trust Indenture Act, the proxy rules' antifraud proscriptions, and the Exchange Act rules that facilitate the transmission of materials to beneficial owners. *See* Exemptive Relief and Simplification of Filing Requirements for Debt Securities To Be Listed on a National Securities Exchange, Release No. 34–34922 (Nov. 1, 1994) [59 FR 55342].

[145] Based on a review of information reported on Forms 10–K, 20–F and 40–F and current public quotation and trade data on issuers whose debt securities are listed on an exchange, such as the *NYSE Listed and Traded Bonds* and *NYSE Amex Listed Bonds,* we estimate that there are approximately 83 issuers that list only debt securities on an exchange. Of these 83 issuers, approximately 45 are wholly-owned subsidiaries that would be exempt from proposed Exchange Act

legislative history and our and the exchanges' historical approach to issuers with only listed debt securities, we noted in the Proposing Release that we view the requirements of Section 10C as intended to apply only to issuers with listed equity securities.[146]

Accordingly, we proposed to apply Rule 10C–1 only to exchanges that list equity securities, and to direct these exchanges to adopt listing standards implementing our rule only as to issuers that are seeking to list or have listed equity securities. We noted in the Proposing Release that proposed Rule 10C–1 would not currently apply to FINRA, the only existing national securities association registered under Section 15A(a) of the Exchange Act, as FINRA does not list any securities and does not have listing standards under its rules.[147] Nevertheless, as Section 10C specifically references national securities associations, proposed Rule 10C–1 would apply to any registered national securities association that lists equity securities in the future.[148]

Under proposed Rule 10C–1(a), exchanges would be required, to the extent that their listing standards did not conform with Rule 10C–1, to issue or amend their listing rules, subject to Commission review, to comply with the new rule. As noted in the Proposing Release, an exchange that lists or trades security futures products (as defined in Exchange Act Section 3(a)(56)) [149] may register as an exchange under Section 6(g) of the Exchange Act solely for the purpose of trading those products. As the Exchange Act definition of ''equity security'' includes security futures on equity securities,[150] exchanges whose only listed equity securities are security futures products [151] would be required to comply with Rule 10C–1 absent an applicable exemption. Given that Section 10C(f) of the Exchange Act makes no distinction between exchanges registered pursuant to Section 6(a)—such as the NYSE and Nasdaq—and those registered pursuant to Section 6(g), we did not propose a wholesale exemption from the requirements of Rule 10C–1 for those exchanges registered solely pursuant to Section 6(g).

However, as discussed below, we proposed to exempt security futures products from the scope of proposed Rule 10C–1. Accordingly, we noted in the Proposing Release that, to the extent the final rule exempted the listing of security futures products from the scope of Rule 10C–1, any exchange registered solely pursuant to Section 6(g) of the Exchange Act and that lists and trades only security futures products would not be required to file a rule change in order to comply with Rule 10C–1.

We proposed to exempt security futures products and standardized options from the requirements of Rule 10C–1. Although the Exchange Act defines ''equity security'' to include any security future on any stock or similar security, the Commodity Futures Modernization Act of 2000 (the ''CFMA'') [152] permits the exchanges to trade futures on individual securities and on narrow-based security indices (''security futures'') [153] without such securities being subject to the registration requirements of the Securities Act of 1933 (the ''Securities Act'') and the Exchange Act so long as they are cleared by a clearing agency that is registered under Section 17A of the Exchange Act [154] or that is exempt from registration under Section 17A(b)(7)(A) of the Exchange Act. In December 2002, we adopted rules that provide comparable regulatory treatment for standardized options.[155]

The clearing agency for security futures products and standardized options is the issuer of these securities,[156] but its role as issuer is fundamentally different from an issuer of equity securities of an operating company. The purchasers of security futures products and standardized options do not, except in the most formal sense, make an investment decision based on the issuer. As a result, information about the clearing agency's business, its officers and directors and its financial statements is much less

Rule 10C–1 pursuant to Section 10C(g) of the Act. None of these 83 issuers has a class of equity securities registered under Section 12 of the Exchange Act.

[146] Although Section 10C is, in many respects, similar to the audit committee independence requirements contained in Section 10A(m), there are differences in some of the statutory language. In this regard, we note that the requirements included in Section 10A(m) of the Exchange Act, as set forth in Section 301 of the Sarbanes-Oxley Act, are applicable generally to ''listed securities,'' and no reference is made to equity securities. Therefore, although Section 10A(m) applies to issuers whether they have listed debt or equity, we do not believe this should necessarily prescribe the scope of Section 10C.

[147] Similarly, we stated that we did not expect the National Futures Association, which is a national securities association registered under Section 15A(k) for the limited purpose of regulating the activities of members who are registered as broker-dealers in security futures products, see note 8, above, to develop listing standards regarding compensation committees in compliance with proposed Rule 10C–1. *See* Proposing Release, 76 FR at 18974, n. 73.

[148] The OTC Bulletin Board (OTCBB) and the OTC Markets Group (previously known as the Pink Sheets and Pink OTC Markets) will not be affected by Rule 10C–1, and therefore issuers whose securities are quoted on these interdealer quotation systems similarly will not be affected, unless their securities also are listed on a national securities exchange. The OTCBB is an ''interdealer quotation system'' for over-the-counter securities that is operated by FINRA. (Exchange Act Rule 15c2–11 defines the term ''interdealer quotation system.'' 17 CFR 240.15c2–11.) It does not, however, have a listing agreement or arrangement with the issuers whose securities are quoted on the system and are not considered listed, as that term is defined and used in Rule 10C–1. *See* Rules 10C–1(a)(2) and (c)(3). Although market makers may be required to review and maintain specified information about an issuer and to furnish that information to FINRA, the issuers whose securities are quoted on the OTCBB are not required to submit any information to the system. The OTC Markets Group is not a registered national securities exchange or association, nor is it operated by a registered national securities exchange or association, and thus is not covered by the terms of the final rule.

[149] Exchange Act Section 3(a)(56) defines the term ''security futures product'' to mean ''a security future or any put, call, straddle, option, or privilege on any security future.'' 15 U.S.C. 78c(a)(56).

[150] Section 3(a)(11) of the Exchange Act defines the term ''equity security'' as any stock or similar security; or any security future on any such security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Commission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security.

[151] Exchanges currently registered solely pursuant to Section 6(g) of the Exchange Act include the Board of Trade of the City of Chicago, Inc.; the CBOE Futures Exchange, LLC; the Chicago Mercantile Exchange, Inc.; One Chicago, LLC; the Island Futures Exchange, LLC; and NQLX LLC.

[152] Public Law 106–554, 114 Stat. 2763 (2000).

[153] Exchange Act Section 3(a)(56) [15 U.S.C. 78c(a)(56)], and Commodities Exchange Act Section 1a(32) [7 U.S.C. la(32)] define ''security futures product'' as a security future or any put, call, straddle, option, or privilege on any security future.

[154] 15 U.S.C. 78q–1.

[155] *See* Release No. 33–8171 (Dec. 23, 2002) [68 FR 188]. In that release, we exempted standardized options issued by registered clearing agencies and traded on a registered national securities exchange or on a registered national securities association from all provisions of the Securities Act, other than the antifraud provision of Section 17, as well as the Exchange Act registration requirements. Standardized options are defined in Exchange Act Rule 9b-1(a)(4) [17 CFR 240.9b–1(a)(4)] as option contracts trading on a national securities exchange, an automated quotation system of a registered securities association, or a foreign securities exchange which relate to option classes the terms of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission may, by order, designate.

[156] *See* Fair Administration and Governance of Self-Regulatory Organizations; Disclosure and Regulatory Reporting by Self-Regulatory Organizations; Recordkeeping Requirements for Self-Regulatory Organizations; Ownership and Voting Limitations for Members of Self-Regulatory Organizations; Ownership Reporting Requirements for Members of Self-Regulatory Organizations; Listing and Trading of Affiliated Securities by a Self-Regulatory Organization, Release No. 34–50699 (Nov. 18, 2004) [69 FR 71126], at n. 260 (''Standardized options and security futures products are issued and guaranteed by a clearing agency. Currently, all standardized options and security futures products are issued by the Options Clearing Corporation ('OCC').'').

relevant to investors in these securities than information about the issuer of the underlying security. Similarly, the investment risk in these securities is determined by the market performance of the underlying security rather than the results of operations or performance of the clearing agency, which is a self-regulatory organization subject to regulatory oversight. Furthermore, unlike a conventional issuer, the clearing agency does not receive the proceeds from the sales of security futures products or standardized options.[157]

In recognition of these fundamental differences, we provided exemptions for security futures products and standardized options from the audit committee listing requirements in Exchange Act Rule 10A–3.[158] Specifically, Rule 10A–3(c) exempts the listing of a security futures product cleared by a clearing agency that is registered pursuant to Section 17A of the Exchange Act or that is exempt from registration pursuant to Section 17A(b)(7)(A) and the listing of a standardized option issued by a clearing agency that is registered pursuant to Section 17A of the Exchange Act. For the same reasons that we exempted these securities from Rule 10A–3, we proposed to exempt these securities from Rule 10C–1.

b. Comments on the Proposed Rule

Commentators generally agreed that Section 10C should apply only to issuers with listed equity securities.[159] Some commentators argued that the proposed rule should apply to all domestic exchanges and public companies without exception.[160] These commentators did not specifically comment on whether the statute is intended to apply only to issuers with listed equity securities. One commentator recommended that we exempt only exchanges that do not list equity securities and agreed that our proposed exemption for security futures products and standardized options is necessary or appropriate in the public interest and consistent with the protection of investors.[161]

c. Final Rule

After consideration of the comments, we are adopting the proposals without change. As adopted, the final rule will:

- Require all exchanges that list equity securities, to the extent that their listing standards do not already comply with the final rule, to issue or amend their listing rules to comply with the new rule;
- Provide that exchange listing standards required by the new rule need apply only to issuers with listed equity securities; and
- Exempt security futures products cleared by a clearing agency that is registered pursuant to Section 17A of the Exchange Act or that is exempt from registration pursuant to Section 17A(b)(7)(A) and standardized options that are issued by a clearing agency that is registered pursuant to Section 17A of the Exchange Act.

2. Exemptions

Section 10C of the Exchange Act has four different provisions relating to exemptions from some or all of the requirements of Section 10C:

- Section 10C(a)(1) provides that our rules shall direct the exchanges to prohibit the listing of any equity security of an issuer that is not in compliance with the compensation committee member independence requirements of Section 10C(a)(2), other than an issuer that is in one of five specified categories—controlled companies, limited partnerships, companies in bankruptcy proceedings, open-end management investment companies registered under the Investment Company Act[162] and foreign private issuers that disclose in their annual reports the reasons why they do not have an independent compensation committee;
- Section 10C(a)(4) provides that our rules shall authorize the exchanges to exempt a particular relationship from the independence requirements applicable to compensation committee members, as each exchange determines is appropriate, taking into consideration the size of the issuer and any other relevant factors;
- Section 10C(f)(3) provides that our rules shall authorize the exchanges to exempt any category of issuer from the requirements of Section 10C as the exchanges determine is appropriate, and that, in making such determinations, the exchanges must take into account the potential impact of the requirements on smaller reporting issuers; and
- Section 10C(g) specifically exempts controlled companies, as defined in Section 10C(g), from all of the requirements of Section 10C.

We proposed Rule 10C–1(b)(1)(iii)(A) to exempt the five categories of issuers enumerated in Section 10C(a)(1); Rule 10C–1(b)(1)(iii)(B) to authorize the exchanges to exempt a particular relationship from the independence requirements applicable to compensation committee members, as each exchange determines is appropriate, taking into consideration the size of the issuer and other relevant factors; Rule 10C–1(b)(5)(i) to permit the exchanges to exempt any category of issuer from the requirements of Section 10C, as each exchange determines is appropriate, taking into consideration the potential impact of such requirements on smaller reporting issuers; and Rule 10C–1(b)(5)(ii) to exempt controlled companies from the requirements of Rule 10C–1. We are adopting the proposals with changes made in response to comments.

a. Proposed Rule

i. Issuers Not Subject to Compensation Committee Independence Requirements

As noted above, Exchange Act Section 10C(a)(1) provides that our rules shall direct the exchanges to prohibit the listing of any equity security of an issuer, other than an issuer that is in one of five specified categories, that is not in compliance with the compensation committee member independence requirements of Section 10C(a)(2). Accordingly, we proposed to exempt controlled companies, limited partnerships, companies in bankruptcy proceedings, open-end management investment companies registered under the Investment Company Act and foreign private issuers that provide annual disclosures to shareholders of the reasons why the foreign private issuer does not have an independent compensation committee from these requirements.

Under Section 10C(g)(2) of the Exchange Act, a ''controlled company'' is defined as an issuer that is listed on an exchange and that holds an election for the board of directors of the issuer in which more than 50% of the voting power is held by an individual, a group or another issuer. We proposed to incorporate this definition into Rule 10C–1(c)(2). Section 10C did not define the terms ''limited partnerships'' or ''companies in bankruptcy proceedings.'' As noted in the Proposing Release, we believe that a limited partnership is generally understood to mean a form of business ownership and association consisting of one or more general partners who are fully liable for the debts and obligations of the partnership and one or more limited partners whose liability is limited to the amount invested.[163] We also noted in

[157] However, the clearing agency may receive a clearing fee from its members.

[158] *See* Exchange Act Rules 10A–3(c)(4) and (5).

[159] *See, e.g.,* letters from Debevoise and PEGCC.

[160] *See* letters from CII and FLSBA.

[161] *See* letter from Merkl.

[162] 15 U.S.C. 80a–1 *et seq.*

[163] *See* Unif. Ltd. P'ship Act §§ 102, 303 and 404 (2001).

the Proposing Release that the phrase ''companies in bankruptcy proceedings'' is used in several Commission rules without definition.[164] Accordingly, we did not further define either term in proposed Rule 10C–1(c).

Section 10C does not define the term ''open-end management investment company.'' As discussed in the Proposing Release, under the Investment Company Act, an open-end management investment company is an investment company, other than a unit investment trust or face-amount certificate company, that offers for sale or has outstanding any redeemable security of which it is the issuer.[165] We proposed to define this term in proposed Rule 10C–1(c) by referencing Section 5(a)(1) of the Investment Company Act.

Under Section 10C(a)(1), a foreign private issuer that provides annual disclosure to shareholders of the reasons why the foreign private issuer does not have an independent compensation committee would be exempt from the compensation committee member independence requirements. Exchange Act Rule 3b–4 defines ''foreign private issuer'' as ''any foreign issuer other than a foreign government, except for an issuer that has more than 50% of its outstanding voting securities held of record by U.S. residents and any of the following: a majority of its officers and directors are citizens or residents of the United States, more than 50% of its assets are located in the United States, or its business is principally administered in the United States.'' [166] Since this definition applies to all Exchange Act rules, we did not believe it was necessary to include a cross-reference to Rule 3b–4 in our proposed rules.

In the Proposing Release, we noted that certain foreign private issuers have a two-tier board, with one tier designated as the management board and the other tier designated as the supervisory or non-management board. Similar to our approach to Rule 10A–3, proposed Rule 10C–1(b)(1)(iii) would clarify that in the case of foreign private issuers with two-tier boards of directors, the term ''board of directors'' means the supervisory or non-management board. Accordingly, to the extent the supervisory or non-management board forms a separate compensation committee, proposed Rule 10C–1 would apply to that committee, with the exception of the committee member independence requirements, assuming the foreign private issuer discloses why it does not have an independent compensation committee in its annual report.

ii. Exemption of Relationships and Other Categories of Issuers

As noted above, Section 10C(a)(4) of the Exchange Act provides that the Commission's rules shall permit an exchange to exempt a particular relationship from the compensation committee independence requirements, as such exchange deems appropriate, taking into consideration the size of the issuer and any other relevant factors. In addition, as noted above, Section 10C(f)(3) provides that our rules shall authorize an exchange to exempt a category of issuers from the requirements of Section 10C, as the exchange determines is appropriate, taking into account the potential impact of the Section 10C requirements on smaller reporting issuers. To implement these provisions, we proposed Rule 10C–1(b)(1)(iii)(B), which would authorize the exchanges to establish listing standards that exempt particular relationships between members of the compensation committee and listed issuers that might otherwise impair the member's independence, taking into consideration the size of an issuer and any other relevant factors, and Rule 10C–1(b)(5)(i), which would allow the exchanges to exempt categories of listed issuers from the requirements of Section 10C, as each exchange determines is appropriate. In determining the appropriateness of categorical issuer exemptions, the exchanges would be required, in accordance with the statute, to consider the potential impact of the requirements of Section 10C on smaller reporting issuers.[167]

Other than the five categories of issuers in Section 10C(a)(1), we did not propose to exempt any relationship or any category of issuer from the compensation committee member independence requirements under Section 10C(a)(1). Instead of including specific exemptions, the proposed rule generally would leave the determination of whether to exempt particular relationships or categories of issuers to the discretion of the exchanges, subject to our review in the rule filing process. Because listed issuers frequently consult the exchanges regarding independence determinations and committee responsibilities, in the proposal we explained that we believed that the exchanges are in the best position to identify any relationships or categories of issuers that may merit exemption from the compensation committee listing requirements.

b. Comments on the Proposed Rule

Comments on the proposals were generally favorable. Commentators generally supported the proposed approach of deferring to the exchanges any decisions to exempt any categories of issuers or particular relationships that might compromise committee member independence.[168] One commentator expressed concern that the proposed definition of ''controlled companies'' would not exempt some listed issuers that are controlled companies under applicable listing standards, but do not actually hold director elections, such as some limited liability companies.[169] This commentator recommended that we revise the definition of ''controlled companies'' in proposed Rule 10C–1(c)(2) so that it would encompass companies that do not actually hold director elections but have more than 50% of the voting power for the election of directors held by an individual, a group or another company.

In the Proposing Release, we requested comment on whether we should exempt any types of issuers, such as registered management investment companies, foreign private issuers or smaller reporting companies,[170] from some or all of the requirements of Section 10C. The NYSE stated its view that the express exclusion of certain types of issuers in

[164] *See, e.g.,* Section 55(a)(3)(A) of the Investment Company Act [15 U.S.C. 80a–54(a)(3)(A)]; Item 1107(k) of Regulation AB [17 CFR 229.1107(k)]; and Rule 457 under the Securities Act [17 CFR 230.457].

[165] *See* Sections 4 and 5(a)(1) of the Investment Company Act [15 U.S.C. 80a–4 and 80a–5(a)(1)]. Open-end and closed-end management investment companies registered under the Investment Company Act are generally exempt from current exchange listing standards that require listed issuers to either have a compensation committee or to have independent directors determine, recommend, or oversee specified executive compensation matters. *See, e.g.,* NYSE Listed Company Manual Section 303A.00; Nasdaq Rule 5615(a)(5); NYSE Arca Rule 5.3; NYSE AMEX Company Guide Section 801.

[166] 17 CFR 240.3b–4(c).

[167] *See* Exchange Act Section 10C(f)(3)(B). Section 10C of the Exchange Act includes no express exemptions for smaller reporting companies. Some exchanges currently have limited exemptions from requirements to have a majority independent board or a three-member audit committee for smaller issuers—for example, NYSE Amex and the Chicago Stock Exchange permit smaller issuers to have a 50% independent board and a minimum of two members on the issuer's audit committee. *See* NYSE Amex Company Guide Section 801(h); Chicago Stock Exchange Article 22, Rules 19(a), 19(b)(1)(C)(iii), and 21(a). Section 10C(f)(3) expressly requires the exchanges to take into account the potential impact of the listing requirements on smaller reporting issuers when exercising the exemptive authority provided to them by our rules.

[168] *See, e.g.,* letters from NYSE and S&C.

[169] *See* letter from Vinson & Elkins LLP (''V&E'').

[170] See Exchange Act Rule 12b–2 for the definition of ''smaller reporting company.''

Section 10C(a)(1) should not prevent an exchange from exempting other types of issuers, and urged us to clarify that the general exemptive authority exchanges would have under Rule 10C–1 is not limited to smaller reporting companies.[171]

Several commentators urged us to exempt all foreign private issuers from the requirements of Section 10C.[172] Another commentator urged us to exempt smaller reporting companies from the requirements of Section 10C because smaller reporting companies may experience more difficulty than other issuers in finding independent directors who are willing to serve on their boards.[173] Other commentators, however, believed that we should not exempt foreign private issuers or smaller reporting companies from the requirements of Section 10C.[174] Several of these commentators supported uniform application of compensation committee independence requirements to all public companies.[175] One commentator believed that domestic companies should not face a stricter regime than foreign companies and suggested that foreign companies could be given a time frame within which they would be required to meet the listing standards that apply to domestic companies.[176]

One commentator urged us to exempt all registered investment companies from the requirements of Section 10C.[177] This commentator noted that registered investment companies are subject to the requirements of the Investment Company Act, including, in particular, requirements concerning potential conflicts of interest related to investment adviser compensation. The commentator also noted that most registered investment companies are externally managed, do not have compensated executives and, therefore, do not need compensation committees to oversee executive compensation.

c. Final Rule

After consideration of the comments, we are adopting the rule with revisions in response to comments. Rule 10C–1(b)(1)(iii) will exempt from the compensation committee member independence listing standards required under Rule 10C–1(a) limited partnerships, companies in bankruptcy proceedings, registered open-end management investment companies and foreign private issuers that provide annual disclosures to shareholders of the reasons why the foreign private issuer does not have an independent compensation committee.

As we proposed, we are also exempting controlled companies from the requirements of Rule 10C–1. In light of Section 10C(g)'s general exemption for controlled companies, we have eliminated the specific exemption for controlled companies from the compensation committee member independence listing standards in final Rule 10C–1(b)(1)(iii). We believe this specific exemption from the compensation committee member independence listing standards for controlled companies is unnecessary in light of the broader exemption for controlled companies provided by final Rule 10C–1(b)(5)(ii).

In response to comments that our proposed definition of controlled company would not exempt listed issuers that would otherwise be controlled companies but for the fact that they do not hold director elections, we are modifying the definition of controlled company in the final rule. Under the final rule, a controlled company will be defined as a listed company in which more than 50% of the voting power for the election of directors is held by an individual, a group or another company. We have removed from the definition the phrase ''holds an election for the board of directors.'' The revised definition of ''controlled company'' will more closely follow the definition of the term currently used by the NYSE and Nasdaq.[178] Although the definition in the final rule is slightly broader than the definition of ''controlled company'' in Section 10C(g)(2), we believe this modification is consistent with the statutory intent to exempt from the requirements of Section 10C those companies that are in fact controlled by a shareholder or group of shareholders, regardless of whether director elections are actually held.

In addition to controlled companies, we are exempting smaller reporting companies, as defined in Exchange Act Rule 12b–2, from the requirements of Rule 10C–1.[179] As noted above, one commentator urged us to exempt smaller reporting companies from the requirements of Section 10C because smaller reporting companies may experience more difficulty than other issuers in finding independent directors who are willing to serve on their boards.[180] This commentator also noted that the compensation committees of smaller reporting companies often do not hire outside compensation consultants, both because their compensation programs tend to be ''relatively simple'' and also because smaller reporting companies ''often cannot afford to hire outside experts.''[181]

We recognize that some commentators opposed such an exemption,[182] but we believe, on balance, that an exemption is appropriate. In 2006, when we substantially revised our executive compensation disclosure rules, we adopted new scaled executive compensation disclosure requirements for smaller companies in recognition of the fact that the ''executive compensation arrangements of small business issuers generally are so much less complex than those of other public companies that they do not warrant the more extensive disclosure requirements imposed on companies that are not small business issuers and related regulatory burdens that could be disproportionate for small business issuers.''[183] In light of those findings with respect to smaller reporting companies' less complex executive compensation arrangements, we are not persuaded that the additional burdens of complying with Rule 10C–1 are warranted for smaller reporting companies.

We appreciate that these burdens for listed smaller reporting companies may not be significant given that such issuers are already subject to listing standards requiring directors on compensation committees or directors determining or recommending executive compensation

[171] *See* letter from NYSE.

[172] *See* letters from ABA, Davis Polk and SAP AG.

[173] *See* letter from ABA.

[174] *See* letters from CalPERS, CII, FLSBA, the Local Authority Pension Fund Forum (''LAPFF''), Merkl, Railpen and USS.

[175] *See* letters from CII, FLSBA and USS.

[176] *See* letter from LAPFF.

[177] *See* letter from the Investment Company Institute (''ICI'').

[178] *See* NYSE Listed Company Manual Section 303A.00 and Nasdaq Rule 5615(c).

[179] Approximately 1%, 25% and 53% of the operating companies listed on the NYSE, the Nasdaq Stock Market, and NYSE Amex, respectively, are smaller reporting companies. See Memorandum to File No. S7–13–11, dated May 8, 2012, concerning information on listed smaller reporting companies, which is available at *http://www.sec.gov/comments/s7–13–11/s71311–60.pdf.*

[180] *See* letter from ABA.

[181] *See id.*

[182] *See* letters from CalPERS, CII, FLSBA, Merkl and Railpen. These commentators did not provide specific reasons for their opposition, other than two commentators noting that the matters addressed in Section 10C are relevant to all public companies. *See* letters from CII and FLSBA.

[183] *See* Executive Compensation and Related Person Disclosure, Release No. 33–8732A (Aug. 29, 2006) [71 FR 53158], at 53192 (''2006 Executive Compensation Release''). In 2007, we adopted a new eligibility standard for ''smaller reporting companies'' to replace the ''small business issuer'' definition then found in Item 10 of Regulation S–B. *See* Smaller Reporting Company Regulatory Relief and Simplification, Release No. 33–8876 (Dec. 19, 2007) [73 FR 934].

matters to be ''independent'' under the exchanges' general independence standards. We do believe, however, that exempting smaller reporting companies from the listing standards mandated by Rule 10C–1 can offer cost savings to these listed issuers to the extent that an exchange, in connection with the listing standards review required by Rule 10C–1, chooses to create a new independence standard for compensation committee members that is more rigorous than its existing standards—for example, a new standard could address personal or business relationships between members of the compensation committee and the listed issuer's executive officers. Issuers subject to the exchange's new standard may need to replace existing compensation committee members, and incur the associated costs, if the existing members do not qualify as independent under the new standard. In addition, although listed smaller reporting companies do not often engage outside compensation consultants, there would be cost savings to these listed issuers from not having to comply with the listing standards involving the compensation committee's engagement and oversight of compensation advisers. For example, the exchanges are required to adopt listing standards that require the compensation committee to consider the six independence factors listed in Rule 10C–1(b)(4) before selecting a compensation adviser. To comply with these listing standards, compensation committees will likely need to create procedures for collecting and analyzing information about potential compensation advisers before they can receive advice from such advisers, which would require the listed issuers to incur costs. We expect, however, that a portion of these cost savings would likely be offset by the costs that smaller reporting companies may incur to comply with the new requirement to disclose compensation consultants' conflicts of interest, which is described in Section II.C below. In light of these considerations, we do not believe it is necessary to require the exchanges to go through the process of proposing to exempt smaller reporting companies in the Section 19(b) rule filing process, since we have concluded that it is appropriate to provide this exemption in any event. Accordingly, we are exempting smaller reporting companies from the requirements of Rule 10C–1.[184]

We are adopting Rules 10C–1(b)(1)(iii)(B) and 10C–1(b)(5)(i) substantially as proposed. Rule 10C–1(b)(1)(iii)(B) authorizes the exchanges to exempt a particular relationship from the compensation committee member independence requirements, as the exchanges deem appropriate, taking into consideration the size of the issuer and any other relevant factors. Rule 10C–1(b)(5)(i) authorizes the exchanges to exempt any category of issuers from the requirements of Section 10C,[185] as each exchange determines is appropriate, taking into consideration the potential impact of the requirements on smaller reporting issuers. In response to comment, we are clarifying that the final rule does not prohibit the exchanges from considering other relevant factors as well. The final rule will allow the exchanges flexibility to propose transactions or categories of issuers to exempt, subject to our review and approval under the Exchange Act Section 19(b) rule filing process. As we noted in the Proposing Release, we believe that relying on the exchanges in this manner to exercise the exemptive authority expressly granted to them under the final rules is consistent with the requirements of Section 10C and will result in more effective determinations as to the types of relationships and the types of issuers that merit an exemption.[186]

As noted by one commentator, most registered investment companies do not have compensated employees or compensation committees.[187] Therefore, the requirements of Rule 10C–1, which does not itself require any issuer to have a compensation committee, will not affect most registered investment companies or impose any compliance obligations on them.[188] This commentator did not explain why, in the infrequent case where a registered investment company has compensated executives and a compensation committee (which are not addressed by Investment Company Act requirements related to investment adviser compensation), the registered investment company should be exempt from the requirements that apply to all other listed issuers with compensation committees. We believe that the exchanges are in a better position to determine the appropriate treatment of registered investment companies that have compensated executives and compensation committees, if any.

C. Compensation Consultant Disclosure and Conflicts of Interest

Section 10C(c)(2) of the Exchange Act requires that, in any proxy or consent solicitation material for an annual meeting (or a special meeting in lieu of the annual meeting), each issuer must disclose, in accordance with regulations of the Commission, whether:

- The compensation committee has retained or obtained the advice of a compensation consultant; and
- The work of the compensation consultant has raised any conflict of interest and, if so, the nature of the conflict and how the conflict is being addressed.

We proposed amendments to Item 407 of Regulation S–K to require issuers to include the disclosures required by Section 10C(c)(2) in any proxy or information statement for an annual meeting (or special meeting in lieu of an annual meeting) at which directors are to be elected. After consideration of the comments, we are adopting a modified version of the proposal.

1. Proposed Rule

Item 407 of Regulation S–K currently requires Exchange Act registrants that are subject to the proxy rules, other than registered investment companies, to provide certain disclosures concerning their compensation committees and the use of compensation consultants. Item 407(e)(3)(iii) generally requires

[184] When an issuer loses its smaller reporting company status, it will be required to comply with the listing standards applicable to non-smaller reporting companies. We anticipate that the exchanges will provide for a transition period for issuers that lose smaller reporting company status, similar to what they currently have for issuers that lose controlled company status. *See, e.g.,* NYSE Listed Company Manual Section 303A.00; Nasdaq Rule 5615(c)(3).

[185] As noted in the Proposing Release, Rule 10C–1(b)(5)(i) does not provide the authority for the exchanges to exempt listed issuers from the disclosure requirements under Item 407 of Regulation S–K, which include Section 10C(c)(2)'s compensation consultant disclosure requirements.

[186] We note that the Jumpstart Our Business Startups Act, Public Law 112–106, 126 Stat. (2012) (the ''JOBS Act''), which was enacted on April 5, 2012, creates a new category of issuer, an ''emerging growth company,'' under the Securities Act and the Exchange Act. *See* Section 2(a)(19) of the Securities Act [15 U.S.C. 77b(a)(19)]; Section 3(a)(80) of the Exchange Act [15 U.S.C. 78c(a)(80)]. An emerging growth company is defined as an issuer that had total annual gross revenues of less than $1 billion during its most recently completed fiscal year. Existing listing standards provide no accommodation for this category of issuer, and the JOBS Act does not require that exchanges do so. The rules we are adopting will permit the exchanges to consider, subject to the Commission's review and approval, whether any exemptions from the listing standards required by Rule 10C–1 are appropriate for emerging growth companies or any other category of issuer.

[187] *See* letter from ICI.

[188] We do not believe that any board committee or members of the board of a registered investment company or business development company would be a ''compensation committee'' under Rule 10C–1 solely as a result of carrying out the board's responsibilities under Rule 38a–1 under the Investment Company Act to approve the designation and compensation of the fund's chief compliance officer. Under Rule 38a–1, the approval of a majority of the board's independent directors is required. *See* 17 CFR 270.38a–1(a)(4).

registrants to disclose ''any role of compensation consultants in determining or recommending the amount or form of executive and director compensation,'' including:

- Identifying the consultants;
- Stating whether such consultants were engaged directly by the compensation committee or any other person;
- Describing the nature and scope of the consultants' assignment, and the material elements of any instructions given to the consultants under the engagement; and
- Disclosing the aggregate fees paid to a consultant for advice or recommendations on the amount or form of executive and director compensation and the aggregate fees for additional services if the consultant provided both and the fees for the additional services exceeded $120,000 during the fiscal year.[189]

The current item excludes from the disclosure requirement any role of compensation consultants limited to consulting on any broad-based plan that does not discriminate in scope, terms or operation in favor of executive officers or directors of the registrant and that is available generally to all salaried employees, or limited to providing information that either is not customized for a particular registrant or is customized based on parameters that are not developed by the compensation consultant, and about which the compensation consultant does not provide advice.[190]

As we noted in the Proposing Release, the trigger for disclosure about compensation consultants under Section 10C(c)(2) is worded differently from the existing disclosure trigger under Item 407(e)(3)(iii). Under Section 10C(c)(2), an issuer must disclose whether the ''compensation committee retained or obtained the advice of a compensation consultant.'' By contrast, existing Item 407 requires disclosure, with limited exceptions, whenever a compensation consultant plays ''any role'' in determining or recommending the amount or form of executive or director compensation. Given the similarities between the disclosure required by Section 10C(c)(2) and the disclosure required by Item 407(e)(3)(iii), we proposed amendments to integrate Section 10C(c)(2)'s disclosure requirements with the existing disclosure rule. Specifically, as proposed, revised Item 407(e)(3)(iii) would include a disclosure trigger consistent with the statutory language and would, therefore, require issuers to disclose whether the compensation committee had ''retained or obtained'' the advice of a compensation consultant during the issuer's last completed fiscal year. If so, the issuer would also be required to provide related disclosures describing the consultant's assignment, any conflicts of interest raised by the consultant's work, and how such conflicts were being addressed. In addition, our proposed rule would alter the existing consultant fee disclosure requirements to include the same disclosure trigger. We noted in the Proposing Release that we believed the practical effect of this change would be minimal, as it would be unusual for a consultant to play a role in determining or recommending the amount of executive compensation without the compensation committee also retaining or obtaining the consultant's advice.

Our proposed integrated disclosure requirement would no longer provide an exception from the requirement to disclose the role of a compensation consultant where that role is limited to consulting on any broad-based plan that does not discriminate in scope, terms or operation in favor of executive officers or directors of the registrant and that is available generally to all salaried employees, or limited to providing information that either is not customized for a particular issuer or is customized based on parameters that are not developed by the consultant and about which the consultant does not provide advice. As we explained in the Proposing Release, we believed this would be ''consistent with the purposes of Section 10C(c)(2), which is to require disclosure about compensation consultants and any conflicts of interest they have in a competitively neutral fashion.''[191] Under the proposed amendments, disclosure about the compensation consultant's role and conflicts of interest would be required even if the consultant provided only advice on broad-based plans or non-customized benchmark data. We proposed, however, that the compensation consultant fee disclosure requirements currently included in Item 407(e)(3) would continue to include exceptions for cases where a consultant's role is limited to providing these types of services.

In order to clarify certain terms contained in Section 10C(c)(2) and used in the proposed rules, we proposed to add an instruction to Item 407(e)(3) to clarify the meaning of the phrase ''obtained the advice.'' The proposed instruction would provide that a compensation committee or management will have ''obtained the advice'' of a compensation consultant if it ''has requested or received advice from a compensation consultant, regardless of whether there is a formal engagement of the consultant or a client relationship between the compensation consultant and the compensation committee or management or any payment of fees to the consultant for its advice.'' In addition, we proposed an instruction that identified the five independence factors that Section 10C requires a listed issuer's compensation committee to consider before selecting a compensation adviser as among the factors that issuers should consider in determining whether there is a conflict of interest that may need to be disclosed.

Finally, under the proposed amendments, these disclosures would be required only in a proxy or information statement for an annual meeting (or special meeting in lieu of an annual meeting) at which directors are to be elected and would apply to issuers subject to our proxy rules, whether listed or not, and whether they are controlled companies or not.

2. Comments on the Proposed Rule

Comments on the proposed amendments were mixed, with the exception of our proposal to require the disclosures called for by Section 10C(c)(2) only in proxy or information statements for meetings at which directors are to be elected, which commentators generally supported.[192]

Several commentators expressed general support for our proposal to require disclosure about compensation consultants' conflicts of interest.[193] Some of these commentators noted that timely disclosure of conflicts is needed to allow investors to adequately monitor

[189] *See* current Items 407(e)(3)(iii)(A) and (B) [17 CFR 229.407(e)(3)(iii)(A) and 229.407(e)(3)(iii)(B)]. Fee disclosure, however, is not required for compensation consultants that work with management if the compensation committee has retained a separate consultant. In promulgating these requirements, we recognized that, in this situation, the compensation committee may not be relying on the compensation consultant used by management, and therefore potential conflicts of interest are less of a concern. *See* Proxy Disclosure Enhancements, Release No. 33–9089 (Dec. 16, 2009) [74 FR 68334] (''Proxy Disclosure Enhancements Release'').

[190] *See* Item 407(e)(3)(iii). In adopting this exclusion, the Commission determined (based on comments it received on the rule proposal) that the provision of such work by a compensation consultant does not raise conflict of interest concerns that warrant disclosure of the consultant's selection, terms of engagement or fees. *See* Proxy Disclosure Enhancements Release.

[191] *See* Proposing Release, 76 FR at 18980.

[192] *See, e.g.,* letters from ABA, AON and Debevoise.

[193] *See, e.g.,* letters from AFSCME, CII, FLSBA, Hermes, OPERS and UAW.

compensation committee performance.[194] For this reason, another commentator noted that disclosure concerning compensation consultant conflicts of interest ''is most appropriately required in the context of other corporate governance disclosures that are most relevant in the context of making voting decisions with respect to the election of directors.'' [195]

Several commentators expressed general support for integrating the Section 10C(c)(2) disclosure requirements into the existing compensation consultant disclosure requirements contained in Item 407(e)(3)(iii) of Regulation S–K.[196] One of these commentators believed that a combined rule with a single trigger for disclosure would benefit issuers and investors by simplifying the disclosure requirement and enhancing the clarity of the disclosure.[197] One commentator opposed integrating the disclosure requirements of Section 10C(c)(2) into Item 407(e)(3)(iii), and believed that a better approach would be to retain the existing disclosure trigger in Item 407(e)(3)(iii) and include a separate disclosure item within Item 407 to address conflict of interest disclosure requirements.[198] This commentator also criticized our proposed amendments because they would narrow the disclosure currently required by Item 407(e)(3)(iii) by excluding those compensation consultants that may have participated in executive compensation determinations but were not actually retained by the compensation committee.[199] Another commentator supported our proposal to integrate the disclosure requirements, but believed it was unnecessary to modify the wording of Item 407(e)(3)(iii) to include the ''retain or obtain the advice'' disclosure trigger included in the Act.[200] This commentator noted that issuers and consulting firms had already made significant adjustments to their business practices in light of the existing Item 407(e)(3) requirements and that it would be costly and unnecessary to make additional adjustments if the wording of the existing rules is changed simply to mirror the language included in the Act.[201]

A significant number of commentators expressed concern over the proposed instruction to clarify the phrase ''obtained the advice.'' [202] These commentators believed that the proposed instruction was too broad and could potentially cover director education programs, unsolicited survey results and publications that contain executive compensation data, which they believed were not intended to be covered by Section 10C(c)(2).[203] A number of these commentators recommended modifications to the instruction, including:

- Excluding insubstantial or unsolicited interaction with a compensation committee; [204]
- Clarifying that the phrase ''obtained the advice'' excludes materials prepared for management by a compensation consultant engaged by management, even if such materials are made available to the compensation committee; [205] and
- Clarifying that ''advice'' has not been obtained unless the compensation consultant provides a recommendation to the committee regarding the amount or form of executive compensation.[206]

A few commentators supported our proposal to require disclosure about the role of compensation consultants even where that role is limited to consulting on broad-based plans or providing non-customized benchmark information.[207] Many more commentators, however, opposed eliminating the current disclosure exclusions under Item 407(e)(3) and recommended that we extend those disclosure exclusions to the new disclosure requirements.[208] Some of these commentators noted that, when the disclosure exemptions in Item 407(e)(3)(iii) were adopted in December 2009, the Commission stated that consulting on broad-based plans or providing non-customized benchmark data did not raise conflict of interest concerns that would warrant disclosure of the consultant's selection, terms of engagement or fees.[209] Another commentator believed that retaining the existing disclosure exclusions in Item 407(e)(3)(iii) would be consistent with the purposes of Section 10C(c)(2) because a consulting firm that provided only non-customized benchmark data to a compensation committee would not be providing ''advice'' to the compensation committee.[210]

Commentators generally supported our proposal to identify the five factors in proposed Rule 10C–1(b)(4)(i) through (v) as among the factors that should be considered in determining whether a conflict of interest exists,[211] though some commentators suggested additional factors that they believed should be considered.[212] In the Proposing Release, we requested comment on whether we should include the appearance of a conflict of interest in our interpretation of what constitutes a ''conflict of interest'' that must be disclosed under the proposed amendments. A few commentators believed that we should require disclosure of the appearance of a conflict of interest or potential conflicts of interest.[213] One of these commentators argued that including potential conflicts is necessary because actual conflicts of interest can be difficult to identify with precision.[214] Other commentators believed that we should not require disclosure of either an appearance of a conflict of interest or a potential conflict of interest, for various reasons, such as: potential conflicts were not covered by the text of Section 10C(c)(2); [215] potential conflicts would be difficult to define and would not provide investors with additional material information regarding the compensation consultant relationship; [216] and compensation committees are not reluctant or unable to conclude that a conflict of interest exists.[217]

Many commentators requested that we clarify that the amendments to Item 407(e)(3)(iii) apply only to board committees that are charged with determining executive compensation, and not to any committee of the board, if separate, that oversees the compensation of non-employee

[194] *See* letters from CII and FLSBA.

[195] *See, e.g.,* letter from ABA.

[196] *See, e.g.,* letters from Davis Polk, Debevoise, Meridian, Pfizer and UAW.

[197] *See* letter from Meridian.

[198] *See* letter from ABA.

[199] *See id.*

[200] *See* letter from AON.

[201] *See id.*

[202] *See, e.g.,* letters from AON, CEC, Davis Polk, Mercer, Meridian, Pearl Meyer & Partners (''Pearl Meyer''), McGuireWoods, NACD, Pfizer, SCSGP and Towers.

[203] *See, e.g.,* letters from Davis Polk, Meridian, NACD and Towers.

[204] *See, e.g.,* letters from Davis Polk and Meridian.

[205] *See* letters from Davis Polk and Towers.

[206] *See* letters from Pfizer and SCSGP.

[207] *See, e.g.,* letters from AFSCME and UAW.

[208] *See, e.g.,* letters from ABA, AON, CEC, Davis Polk, Debevoise, Meridian, SCSGP, Towers and U.S. Chamber of Commerce (Apr. 28, 2011) (''Chamber'').

[209] *See, e.g.,* letter from ABA and Davis Polk.

[210] *See* letter from SCSGP.

[211] *See* letters from AON and Towers.

[212] *See, e.g.,* letters from AFSCME (urging consideration of the ratio between fees paid for executive compensation and non-executive compensation consulting work, as well as equity ownership and incentive compensation arrangements of consultants) and Merkl (urging consideration of private and business relationships between the person employing the adviser and executive officers or members of the compensation committee, as well as stock ownership by the person that employs the adviser, if it is material).

[213] *See* letters from Better Markets, OPERS, and Towers.

[214] *See* letter from Better Markets.

[215] *See* letters from ABA, AON, and Mercer.

[216] *See* letter from ABA.

[217] *See* letter from AON.

directors.[218] Several of these commentators noted that in many instances, a committee other than the company's compensation committee, such as a governance committee, determines the compensation of the company's non-executive directors.[219]

We requested comment on whether we should extend the Section 10C(c)(2) disclosure requirements to compensation advisers other than compensation consultants. Comments were mixed. A number of commentators believed we should require conflicts of interest disclosure for all types of advisers, including legal counsel.[220] One commentator stated that extending the disclosure requirements to legal counsel would benefit the investing public in its consideration of compensation issues.[221] Another commentator noted that requiring such disclosure would allow investors to determine whether the compensation committee had the benefit of independent legal advice in making compensation determinations.[222] Other commentators felt that conflicted compensation advisers of any kind could not be relied upon to serve the best interests of the issuer and its shareholders.[223] Two commentators opposed extending the proposed disclosure requirements to legal counsel.[224] One of these commentators believed that the specific statutory reference in Section 10C(c)(2) to ''compensation consultants'' reflects a deliberate policy choice by Congress to limit the additional required disclosures to compensation consultants alone.[225]

The proposed rule would apply to issuers that are required to comply with the proxy rules. One commentator supported our proposal to require controlled companies to provide disclosures relating to compensation consultants and conflicts of interest raised by the consultants' work.[226] Three commentators were opposed to this proposed requirement,[227] and one of them questioned the value of requiring disclosure of a compensation consultant's conflicts of interest in cases where the composition of the board of directors and compensation committee is subject to the direction of a control person or group.[228] One commentator supported our proposal to require smaller reporting companies to provide disclosures relating to compensation consultant conflicts of interest, noting that ''[w]e are not aware of any particular problems smaller reporting companies have had with the existing rules, and we do not believe the additional rules mandated by Dodd-Frank will be any more burdensome on smaller reporting companies.'' [229]

We received few comments on our proposal to extend the disclosure requirements to Exchange Act registrants that are not listed issuers. Two commentators supported our proposal.[230] One commentator who opposed the proposal believed that extending the disclosure requirements of Section 10C(c)(2) to non-listed issuers is not required by Section 10C or for the protection of investors.[231]

Several commentators agreed that we should not amend Forms 20–F or 40–F to require foreign private issuers that are not subject to our proxy rules to provide annual disclosure of the type required by Section 10C(c)(2).[232] Two of these commentators noted that imposing such requirements would be inconsistent with the current disclosure paradigm for compensation matters, which generally defers to a foreign private issuer's home country rules.[233] One commentator, however, expressed the view that foreign private issuers should have to comply with the same compensation consultant disclosure requirements as domestic issuers.[234]

3. Final Rule

After consideration of the comments, we are adopting a modified version of the proposed amendments. The amendments we are adopting implement the disclosure requirements of Section 10C(c)(2) while preserving the existing disclosure requirements under Item 407(e)(3).

a. Disclosure Requirements

Rather than integrating the new disclosure requirements with the existing compensation consultant disclosure provisions, as proposed, we are retaining the existing disclosure trigger and requirements of Item 407(e)(3)(iii) and adding a new subparagraph to Item 407(e)(3) to require the disclosures mandated by Section 10C(c)(2)(B). With respect to Section 10C(c)(2)(A), which requires an issuer to disclose whether its compensation committee retained or obtained the advice of a compensation consultant, we believe existing Item 407(e)(3)(iii) implements this disclosure requirement, as it requires disclosure, with certain exceptions discussed more fully below, of any role compensation consultants played in determining or recommending the amount or form of executive and director compensation. As we noted in the Proposing Release, we believe it would be unusual for a compensation consultant to play ''any role'' in determining or recommending the amount of executive compensation without the compensation committee also retaining or obtaining the compensation consultant's advice.

With respect to the disclosures mandated by Section 10C(c)(2)(B), we are persuaded by comments noting that our proposal to use the ''retain or obtain the advice'' disclosure trigger included in Section 10C could result in unnecessary, and potentially costly, adjustments by issuers and consulting firms that have adapted their business practices in light of the existing Item 407(e)(3)(iii) disclosure requirements. In addition, we note the comment pointing out that our proposal would eliminate the existing requirement to disclose the role of compensation consultants retained by management rather than the compensation committee. Consequently, we have concluded that this change to the existing requirement is not appropriate. In lieu of our proposal to integrate the Section 10C(c)(2) disclosure requirements with the existing disclosure rule, we have determined to adopt a new disclosure provision, new Item 407(e)(3)(iv), to implement Section 10C(c)(2).

Under Item 407(e)(3)(iii), registrants will continue to be required to disclose ''any role of compensation consultants in determining or recommending the amount or form of executive and director compensation.'' Specifically, registrants will continue to be required to:

- Identify the consultants;
- State whether such consultants were engaged directly by the compensation committee or any other person;
- Describe the nature and scope of the consultant's assignment and the material elements of any instructions given to the consultants under the engagement; and
- Disclose the aggregate fees paid to a consultant for advice or recommendations on the amount or form of executive and director

[218] *See, e.g.,* letters from CEC, Chamber, Davis Polk, Pfizer, and SCSGP.

[219] *See* letters from CEC and Chamber.

[220] *See, e.g.,* letters from Better Markets, CII, Fields, FLSBA, Jackson, and Towers.

[221] *See* letter from Fields.

[222] *See* letter from Jackson.

[223] *See* letters from CII and FLSBA.

[224] *See* letters from ABA and McGuire Woods.

[225] *See* letter from McGuire Woods.

[226] *See* letter from AON.

[227] *See* letters from ABA, Debevoise, and Merkl.

[228] *See* letter from Debevoise.

[229] *See* letter from AON.

[230] *See* letters from AON and Merkl.

[231] *See* letter from Debevoise.

[232] *See* letters from ABA, AON, Debevoise, and SAP.

[233] *See* letters from Debevoise and SAP.

[234] *See* letter from Merkl.

compensation and the aggregate fees for additional services if the consultant provided both and the fees for the additional services exceeded $120,000 during the fiscal year.[235]

With respect to the new requirement in Item 407(e)(3)(iv) to disclose compensation consultant conflicts of interest, we have decided to use the ''any role'' disclosure trigger rather than the ''obtained or retained the advice'' trigger included in Section 10C. Hence, the new requirement will apply to any compensation consultant whose work must be disclosed pursuant to Item 407(e)(3)(iii), regardless of whether the compensation consultant was retained by management or the compensation committee or any other board committee. We believe that this approach is consistent with the meaning of the words ''retained *or obtained''* (emphasis added) in Section 10C, as there will be little practical difference in the application of the two disclosure triggers as they relate to consultants advising on executive compensation matters. Based on the comments on this aspect of the proposal, we also believe that the existing disclosure trigger is well-understood by issuers. Because we are not changing the disclosure trigger, we no longer find it necessary to include an instruction to clarify when a compensation committee has ''obtained'' advice. We are persuaded by commentators who expressed the view that the instruction, as proposed, was overly broad.

As is the case with our existing requirement to disclose the role of compensation consultants in determining or recommending the amount or form of executive and director compensation, issuers will be required to comply with the new disclosure requirement relating to compensation consultant conflicts of interest in a proxy or information statement for an annual meeting (or special meeting in lieu of an annual meeting) at which directors are to be elected. Although Section 10C(c)(2) is not explicitly limited to proxy statements for meetings at which directors will be elected, we believe this approach is appropriate in light of the approach in our rules to disclosure of compensation consultant matters generally.

This new subparagraph will apply to issuers subject to our proxy rules, including controlled companies, non-listed issuers and smaller reporting companies.[236] Although Section 10C(c)(2) does not mandate this disclosure for issuers that will not be subject to the listing standards required by Rule 10C–1, we believe that investors are better served by requiring all issuers subject to our proxy rules to provide timely disclosure of compensation consultants' conflicts of interests, which will enable investors to adequately monitor compensation committee performance and will help investors make better informed voting decisions with respect to the election of directors, including members of the compensation committee. Under the final amendments, issuers subject to our proxy rules will be required to disclose, with respect to any compensation consultant that is identified pursuant to Item 407(e)(3)(iii) as having played a role in determining or recommending the amount or form of executive and director compensation, whether the work of the compensation consultant has raised any conflict of interest and, if so, the nature of the conflict and how the conflict is being addressed. As commentators generally supported our proposal to identify the independence factors that a compensation committee must consider before selecting a compensation adviser as among the factors that should be considered in determining whether a consultant conflict of interest exists, the final amendments will include an instruction to Item 407(e)(3) noting that, in deciding whether there is a conflict of interest that may need to be disclosed, issuers should, at a minimum, consider the six factors set forth in Rule 10C–1(b)(4)(i) through (vi).

We are sensitive to the additional burdens placed on issuers from the expansion of disclosure obligations under our rules. In light of those concerns, the final rule will not require disclosure of potential conflicts of interest or an appearance of a conflict of interest, nor will it require disclosure with respect to compensation advisers other than compensation consultants. These additional disclosures are not mandated by Section 10C, and we are not persuaded that the additional burdens of requiring this disclosure are justified by the potential benefit to investors.

b. Disclosure Exemptions

We proposed to eliminate the disclosure exemption in Item 407(e)(3) for compensation consulting services involving only broad-based, non-discriminatory plans and the provision of non-customized survey data. Several commentators opposed to the proposed elimination noted that, when the disclosure exemptions in Item 407(e)(3)(iii) were adopted in December 2009, we stated that consulting on broad-based plans or providing non-customized benchmark data did not raise conflict of interest concerns that would warrant disclosure of the consultant's selection, terms of engagement, or fees.[237] We continue to believe that compensation consulting work limited to these activities does not raise conflict of interest concerns. Accordingly, consulting on broad-based plans and providing non-customized benchmark data will continue to be exempted from the compensation consultant disclosure requirements under Item 407(e)(3), including the new conflicts of interest disclosure required in our rules implementing Section 10C(c)(2).

c. Disclosure Regarding Director Compensation

Several commentators requested that we clarify that the proposed amendments to Item 407(e)(3)(iii) apply only to board committees that are charged with determining executive compensation and not to other committees that oversee the compensation of non-employee directors.[238] We believe these comments were prompted by our proposal, described above, to replace the existing disclosure trigger in Item 407(e)(3)(iii) with our proposed trigger, which referenced compensation consultants retained by the compensation committee. As discussed above, we have determined to retain the existing disclosure trigger in Item 407(e)(3), which requires disclosure of the role played by compensation consultants in determining or recommending ''executive *and director* compensation'' (emphasis added).

Issuers are currently required to discuss in proxy and information statements the role played by

[235] The rule will continue not to require fee disclosure for compensation consultants that work with management if the compensation committee has retained a separate compensation consultant. As we noted in the Proxy Disclosure Enhancements Release, in this situation, the compensation committee may not be relying on the compensation consultant retained by management and potential conflicts of interest are therefore less of a concern.

[236] Foreign private issuers that are not subject to our proxy rules will not be required to provide this disclosure. Registered investment companies are subject to separate proxy disclosure requirements set forth in Item 22 of Schedule 14A, which do not include the compensation consultant disclosure requirement in Item 407(e)(3) of Regulation S–K. *See* Item 7(g) of Schedule 14A. As we proposed, registered investment companies will continue to provide disclosure under Item 22 and will not be subject to the amendments to Item 407(e) adopted in this release.

[237] *See* letters from ABA, Davis Polk and SCSGP.

[238] *See, e.g.,* letters from CEC, Chamber, Davis Polk, Pfizer, and SCSGP.

compensation consultants in determining or recommending the amount or form of director compensation, including the nature and scope of their assignment and any material instructions or directions governing their performance under the engagement and to provide fee disclosure, all to the same extent that the disclosure is required regarding executive compensation. In light of the approach we are taking to the new disclosure requirement generally, which is to add the new requirement to the existing disclosure requirements using the existing triggers, we believe it is appropriate to apply the compensation consultant conflict of interest disclosure requirement to director compensation in the same manner as executive compensation. We believe this will benefit investors by providing for more complete and consistent disclosures on how the board manages compensation-related conflicts of interest. Accordingly, to the extent consulting on director compensation raises a conflict of interest on the part of the compensation consultant, disclosure would be required in response to new Item 407(e)(3)(iv).

D. Transition and Timing

The Act did not establish a specific deadline by which the listing standards promulgated by the exchanges must be in effect. To facilitate timely implementation of the proposals, we proposed that each exchange must provide to the Commission, no later than 90 days after publication of our final rule in the **Federal Register**, proposed listing rules or rule amendments that comply with our final rule. Further, we proposed that each exchange would need to have final rules or rule amendments that comply with our final rule approved by the Commission no later than one year after publication of our final rule in the **Federal Register**.

Comments were mixed on these proposals. One commentator did not believe that the 90-day period would afford the exchanges enough time to draft the proposed rules or rule amendments or to work through related concerns or issues.[239] The only comment letter we received from an exchange, however, indicated that the 90-day period would be adequate.[240] The exchange recommended, however, that instead of obligating exchanges to have rules approved by the Commission within any set timeframe, we should instead require exchanges to respond to any written comments issued by the Commission or its staff within 90 days.

Two commentators requested that we clarify that the exchanges may provide their listed issuers a transition period to come into compliance with the listing standards required by Rule 10C–1.[241] Two other commentators requested that the Commission include a transition period for newly listed issuers directly in Rule 10C–1.[242] One of these commentators also recommended a two-year delayed phase-in period for smaller reporting companies, if they are not exempted entirely from the compensation committee and independence requirements and consultant disclosures.[243] Another commentator requested that we establish a specific time period by which all listed issuers must comply with an exchange's new or amended rules meeting the requirements of our final rules.[244] This commentator believed that a longer time frame, such as a year, would give listed issuers sufficient time to comply with the new standards.

After consideration of the comments, we are adopting the implementation period as proposed. We believe that retaining the requirement for each exchange to have final rules or rule amendments that comply with our final rule approved by the Commission no later than one year after publication of our final rule in the **Federal Register** will ensure that the exchanges work expeditiously and in good faith to meet the requirements of the new rule. We also note that Rule 10A–3 included a similar requirement with a significantly shorter compliance period.[245] Although the final rule does not provide an extended transition period for newly listed issuers, we note that the exemptive authority provided to the exchanges under the final rule permits them to propose appropriate transition periods. As noted above, we are exempting smaller reporting companies from the requirements of Rule 10C–1.

Section 10C(c)(2) provides that the compensation consultant conflict of interest disclosure would be required with respect to meetings occurring on or after the date that is one year after the enactment of Section 10C, which was July 21, 2011; however, the statute also requires these disclosures to be ''in accordance with regulations of the Commission,'' and, prior to the adoption of these new rules, our regulations have not required such disclosures to be made. We recognize that issuers will need to implement disclosure controls and procedures to collect and analyze information relevant to whether their compensation consultants have a conflict of interest. As a result, we have decided to require compliance with new Item 407(e)(3)(iv) in any proxy or information statement for an annual meeting of shareholders (or a special meeting in lieu of the annual meeting) at which directors will be elected occurring on or after January 1, 2013.

III. Paperwork Reduction Act

A. Background

Certain provisions of the final rule and rule amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[246] We published a notice requesting comment on the collection of information requirements in the Proposing Release for the rule amendments, and we submitted these requirements to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[247] The titles for the collection of information are:

(1) ''Regulation 14A and Schedule 14A'' (OMB Control No. 3235–0059);

(2) ''Regulation 14C and Schedule 14C'' (OMB Control No. 3235–0057); and

(3) ''Regulation S–K'' (OMB Control No. 3235–0071).[248]

Regulation S–K was adopted under the Securities Act and Exchange Act; Regulations 14A and 14C and the related schedules were adopted under the Exchange Act. The regulations and schedules set forth the disclosure requirements for proxy and information statements filed by companies to help investors make informed investment and voting decisions. The hours and costs associated with preparing, filing and sending the schedules constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to,

[239] *See* letter from Debevoise.

[240] *See* letter from NYSE.

[241] *See* letters from NYSE and S&C.

[242] *See* letters from ABA and Davis Polk.

[243] *See* letter from ABA.

[244] *See* letter from Debevoise.

[245] The release adopting Rule 10A–3 was published in the **Federal Register** on April 16, 2003. The exchanges were required to have final rules or rule amendments that complied with Rule 10A–3 approved by the Commission no later than December 1, 2003.

[246] 44 U.S.C. 3501 *et seq.*

[247] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[248] The paperwork burden from Regulation S–K is imposed through the forms that are subject to the disclosure requirements in Regulation S–K and is reflected in the analysis of these forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, for administrative convenience we estimate the burden imposed by Regulation S–K to be a total of one hour.

a collection of information unless it displays a currently valid OMB control number. Compliance with the new rule and rule amendments will be mandatory. Responses to the information collections will not be kept confidential, and there is no mandatory retention period for the information disclosed.

B. Summary of the Final Rules

As discussed in more detail above, we are adopting new Rule 10C–1 under the Exchange Act and amendments to Item 407(e)(3) of Regulation S–K. Rule 10C–1 will direct the exchanges to prohibit the listing of any equity security of an issuer, subject to certain exceptions, that is not in compliance with several enumerated standards relating to the issuer's compensation committee and the process for selecting a compensation adviser to the compensation committee. Rule 10C–1 will not impose any collection of information requirements on the exchanges or on listed issuers.

The amendments to Item 407(e)(3) will require issuers, other than registered investment companies,[249] to disclose, in any proxy or information statement relating to an annual meeting of shareholders (or a special meeting in lieu of an annual meeting) at which directors are to be elected, whether the work of any compensation consultant that has played any role in determining or recommending the amount or form of executive and director compensation (other than any role limited to consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of executive officers of the registrant, and that is available generally to all salaried employees; or providing information that either is not customized for a particular registrant or that is customized based on parameters that are not developed by the compensation consultant, and about which the compensation consultant does not provide advice) has raised a conflict of interest. If so, the issuer must also disclose the nature of the conflict and how the conflict is being addressed.

C. Summary of Comment Letters and Revisions to Proposals

In the Proposing Release, we requested comment on our PRA burden hour and cost estimates and the analysis used to derive such estimates. Only one commentator specifically addressed our PRA analysis and burden estimates of the proposed amendments.[250] This commentator asserted that some of the estimates we used to calculate the burden hours of the proposed amendments may be inaccurate, which could result in our underestimating the actual burden of the amendments. This commentator, however, did not provide any alternative burden hour or cost estimates for us to consider and did not identify any particular estimates included in the Proposing Release that it believed to be inaccurate.

In response to comments on the proposals, we have made modifications to the rule proposals that will reduce the compliance burden on issuers. First, the final rule amendments leave intact the existing exemption from the requirement to disclose the role of a compensation consultant where that role is limited to providing advice on broad-based plans and information that either is not customized for a particular issuer or is customized based on parameters that are not developed by the consultant and about which the consultant does not provide advice. Accordingly, issuers will be required to provide less disclosure than would have been required under the proposed amendments. Second, we have retained the existing disclosure trigger in Item 407(e)(3) and eliminated the proposed instruction regarding whether a compensation committee has ''obtained the advice'' of a compensation consultant. Based on comments received that issuers are already familiar with and have adopted business practices to comply with the existing disclosure trigger, we believe retaining the existing disclosure trigger will make it easier for issuers to determine whether conflict of interest disclosure is required for a particular compensation consultant.

D. Revisions to PRA Reporting and Cost Burden Estimates

As a result of the changes described above, we have reduced our reporting and cost burden estimates for the collection of information under the final amendments. The final rule amendments to Item 407(e)(3) of Regulation S–K will require additional disclosure in proxy or information statements filed on Schedule 14A or Schedule 14C of whether the work of a compensation consultant that has played any role in determining or recommending the amount or form of executive and director compensation, with certain exceptions, has raised a conflict of interest, and, if so, the nature of the conflict and how the conflict is being addressed. The instruction to Item 407(e)(3)(iv) provides that an issuer, in determining whether there is any such conflict, should consider the same six independence factors that the compensation committee of a listed issuer is required to consider before selecting a compensation adviser. For purposes of the PRA, we now estimate that the total annual increase in the paperwork burden for all companies to prepare the disclosure that would be required under the proposed amendments will be approximately 11,970 hours of in-house personnel time and approximately $1,596,000 for the services of outside professionals.[251] We estimate that the amendments to Item 407(e)(3) of Regulation S–K would impose on average a total of two incremental burden hours per issuer. These estimates include the time and the cost of collecting the required information, preparing and reviewing responsive disclosure, and retaining records. We continue to believe it is appropriate to assume that the burden hours associated with the amendments will be comparable to the burden hours related to similar disclosure requirements under our current rules regarding compensation consultants. Our estimates, as well as their reasonableness, were presented to the public for consideration, and we received no alternative burden hour or cost estimates in response.[252]

The table below shows the total annual compliance burden, in hours and in costs, of the collection of information pursuant to the final amendments to Item 407(e)(3) of Regulation S–K.[253] The burden estimates were calculated by multiplying the estimated number of responses by the estimated average amount of time it would take an issuer to prepare and review the adopted disclosure requirements. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the issuer internally is reflected in hours. For purposes of the PRA, we estimate that 75% of the burden of preparation of Schedules 14A and 14C is carried by

[249] Registered investment companies are subject to separate proxy disclosure requirements set forth in Item 22 of Schedule 14A, which do not include the compensation consultant disclosure requirement in Item 407(e)(3) of Regulation S–K. *See* Item 7(g) of Schedule 14A. As we proposed, registered investment companies will continue to provide disclosure under Item 22 and will not be subject to the amendments to Item 407(e) adopted in this release.

[250] *See* letter from Chamber.

[251] Our estimates represent the average burden for all issuers, both large and small.

[252] *See* Proxy Disclosure Enhancements Release (in which the Commission estimated the average incremental disclosure burden for the rule amendments to Item 407(e)(3) relating to compensation consultants to be three hours).

[253] For convenience, the estimated hour and cost burdens in the table have been rounded to the nearest whole number.

the issuer internally and that 25% of the burden of preparation is carried by outside professionals retained by the issuer at an average cost of $400 per hour. There is no change to the estimated burden of the collections of information under Regulation S–K because the burdens that this regulation imposes are reflected in our burden estimates for Schedules 14A and 14C.

TABLE 1—ESTIMATED INCREMENTAL PAPERWORK BURDEN UNDER THE FINAL RULES FOR SCHEDULES 14A AND 14C

	Number of responses (A) [254]	Incremental burden hours/ form (B)	Total incremental burden hours (C)=(A)*(B)	Internal company time (D)	External professional time (E)	Professional costs (F)=(E)*$400
Sch. 14A	7,300	2	14,600	10,950	3,650	$1,460,000
Sch. 14C	680	2	1,360	1,020	340	136,000
Total	7,980		15,960	11,970	3,990	$1,596,000

IV. Economic Analysis

A. Background and Summary of the Rule Amendments

As discussed above, we are adopting a new rule and rule amendments to implement Section 10C of the Exchange Act, as added by Section 952 of the Act. Section 10C of the Exchange Act requires us to adopt rules directing the exchanges to prohibit the listing of any equity security of an issuer, with certain exceptions, that is not in compliance with several enumerated standards regarding compensation committees. In addition, Section 10C(c)(2) requires each listed issuer to disclose in any proxy or consent solicitation material for an annual meeting of shareholders (or a special meeting in lieu of the annual meeting), in accordance with Commission regulations, whether the issuer's compensation committee retained or obtained the advice of a compensation consultant; whether the work of the compensation consultant has raised any conflict of interest; and, if so, the nature of the conflict and how the conflict is being addressed. The rule and rule amendments we are adopting implement these mandates, and also include the following provisions:

- New Rule 10C–1 will direct the exchanges to adopt listing standards that apply to any board committee that oversees executive compensation, whether or not such committee performs other functions or is formally designated as a ''compensation committee.''
- The exchanges will be directed to apply the required listing standards, other than those relating to the authority to retain compensation advisers in Rule 10C–1(b)(2)(i) and required funding for payment of such advisers in Rule 10C–1(b)(3), also to those members of a listed issuer's board of directors who, in the absence of a board committee performing such functions, oversee executive compensation matters on behalf of the board of directors.
- With respect to the factors required by Section 10C(b) of the Exchange Act, we are adopting one additional independence factor that compensation committees must consider before engaging a compensation adviser.
- An instruction to final Rule 10C–1(b)(4) will provide that the compensation committee of a listed issuer is not required to consider the independence factors before consulting with or receiving advice from in-house counsel.
- We are exempting security futures products, standardized options, and smaller reporting companies from the scope of Rule 10C–1.
- For purposes of Rule 10C–1, we are modifying the definition of a controlled company, which is exempt from Rule 10C–1, to be a listed company in which more than 50% of the voting power for the election of directors is held by an individual, a group or another company, which is consistent with the definition used by the NYSE and Nasdaq.
- The final rules will require the disclosures relating to compensation consultant conflicts of interest called for by Section 10C(c)(2) only in proxy or information statements for meetings at which directors are to be elected.
- The compensation consultant conflicts of interest disclosure requirement will apply when a compensation consultant plays ''any role'' in ''determining or recommending the amount or form of executive and director compensation,'' other than any role limited to consulting on broad-based plans or providing non-customized benchmark data, which is consistent with the existing Item 407(e)(3)(iii) of Regulation S–K standard.
- The compensation consultant conflicts of interest disclosure requirement will apply to all issuers subject to our proxy rules, including controlled companies, smaller reporting companies and non-listed issuers.
- The compensation consultant conflicts of interest disclosure requirement will require disclosure of compensation consultant conflicts of interest that relate to director compensation, in addition to executive compensation.
- The instruction to the compensation consultant conflicts of interest disclosure requirement provides that an issuer, in determining whether there is a conflict of interest, should consider the same six independence factors that the compensation committee of a listed issuer is required to consider before selecting a compensation adviser.

We are sensitive to the costs and benefits imposed by our rules. The discussion below attempts to address both the costs and benefits of Section 10C, as well as the incremental costs and benefits of the rule and rule amendments we are adopting within our discretion to implement Section 10C. These two types of costs and benefits may not be entirely separable to the extent our discretion is exercised to realize the benefits that we believe were intended by Section 952 of the Act. Section 23(a)(2) of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition.[255] In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 2(b) of the Securities Act [256] and Section 3(f) of the Exchange Act [257] require us, when engaging in rulemaking where we

[254] The information in this column is based on the number of responses for these schedules as reported in the OMB's Inventory of Currently Approved Information Collections, available at *http://www.reginfo.gov/public/do/PRAMain;jsessionid=D37174B5F6F9148DB767D63DF6983A65*.

[255] 15 U.S.C. 78w(a)(2).

[256] 15 U.S.C. 77b(b).

[257] 15 U.S.C. 78c(f).

are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. We have integrated our consideration of those issues into this economic analysis.

In the Proposing Release, we solicited comment on the costs and benefits of the proposed rules, whether the proposed rule and rule amendments would place a burden on competition, and the effect of the proposal on efficiency, competition, and capital formation. Only one commentator specifically addressed the cost-benefit analysis we included in the Proposing Release or our analysis of whether the proposals would burden competition or impact efficiency, competition, and capital formation.[258] This commentator argued that the proposals would impose additional compensation disclosure and director independence requirements that could be burdensome and result in additional disclosure of an issuer's use of compensation consultants, without in every case providing meaningful benefit to issuers or investors, and that could also confuse investors or deter investors from ''reading proxy materials by increasing their length and density without pruning other, less pertinent, or dated disclosures.'' [259] As discussed throughout this release, we have made numerous revisions to the proposed rules in order to address these concerns and reduce compliance burdens where consistent with investor protection. Other commentators addressed specific aspects of the proposed rule amendments that identified possible costs, benefits, or effects on efficiency, competition or capital formation, which we discuss in more detail below.

B. Benefits and Costs, and Impact on Efficiency, Competition and Capital Formation

1. Section 10C of the Exchange Act, as Added by Section 952 of the Act

New Rule 10C–1 implements the listing standard requirements of Section 10C by directing the exchanges to prohibit the listing of any equity security of an issuer that is not in compliance with the following standards:

- Each member of the compensation committee of the issuer must be a member of the issuer's board of directors and independent according to independence criteria determined by each exchange following consideration of specified factors;
- The compensation committee of each issuer must be directly responsible for the appointment, compensation, retention and oversight of the work of any compensation adviser retained by the committee, and each such compensation adviser must report directly to the compensation committee;
- Each compensation committee must have the authority to retain independent legal counsel and other compensation advisers;
- The compensation committee of each issuer may select a compensation adviser only after assessing the adviser's independence using specified factors; and
- Each issuer must provide appropriate funding, as determined by the compensation committee, for payment of reasonable compensation to compensation advisers retained by the compensation committee.

Under the final rule, subject to our review in accordance with Section 19(b) of the Exchange Act, an exchange may exempt any category of issuers from the compensation committee listing requirements and any particular relationships from the compensation committee member independence requirements, as the exchange determines is appropriate, after consideration of the impact of the requirements on smaller reporting issuers and other relevant factors.

The rules we are adopting are intended to benefit both issuers and investors. The final rules are expected to help achieve Congress's intent that listed issuers' board committees that set compensation policy consist only of directors who are independent. By requiring compensation committees to consider the independence of potential compensation advisers before they are selected, the final rules should also help assure that compensation committees of affected listed issuers are better informed about potential conflicts, which could reduce the likelihood that they are unknowingly influenced by conflicted compensation advisers. The provisions of the listing standards that will require compensation committees to be given the authority to engage, oversee and compensate independent compensation advisers should bolster the access of board committees of affected listed issuers that are charged with oversight of executive compensation to the resources they need to make better informed compensation decisions. Taken as a whole, these requirements could benefit issuers and investors to the extent they enable compensation committees to make better informed decisions regarding the amount or form of executive compensation.

The listing standard provisions of the rule and rule amendments will also result in certain costs to exchanges and affected listed issuers. Final Rule 10C–1 directs the exchanges to prohibit the listing of any equity security of an issuer that is not in compliance with Section 10C's compensation committee and compensation adviser requirements. Exchanges will incur direct costs to comply with the rule, as they will need to review their existing rules and propose appropriate rule changes to implement the requirements of Rule 10C–1. Once the exchanges have adopted listing standards required by Rule 10C–1, listed issuers will incur costs in assessing and demonstrating their compliance with the new listing standards. We note that these costs are primarily imposed by statute.

The adoption of new listing standards may have some distributional effects as some listed issuers may seek to list on foreign exchanges or other markets to avoid compliance with listing requirements that an exchange develops. To the extent they do so, listed issuers would incur costs in seeking to transfer their listings, and exchanges that lose issuer listings would, as a result, lose related fees and trading volume. We believe that any such effect would be minimal as the exchanges already require directors on compensation committees or directors determining or recommending executive compensation matters for domestic issuers to be ''independent'' under their general independence standards.[260]

As required by Section 10C, Rule 10C–1 directs the exchanges to develop a definition of independence applicable to compensation committee members after considering the relevant factors set forth in Exchange Act Section 10C(a)(3). These factors include:

- A director's source of compensation, including any consulting, advisory or compensatory fee paid by the issuer; and
- whether a director is affiliated with the issuer, a subsidiary of the issuer, or an affiliate of a subsidiary of the issuer.

We are not adopting any additional factors that the exchanges must consider in determining independence requirements for compensation committee members. Instead, Rule 10C–1 affords the exchanges latitude in

[258] *See* letter from Chamber.

[259] *Id.*

[260] *See, e.g.,* NYSE Listed Company Manual Section 303A.05(a) and Nasdaq Rule 5605(d). Foreign private issuers are permitted under these listing standards to follow home country practice with respect to executive compensation oversight.

determining the required independence standards. Several commentators indicated that the proposed rule would permit the exchanges to determine listing standards that take into account the characteristics of each exchange's listed issuers.[261] We believe that affording the exchanges flexibility in determining the required independence standards, subject to our review pursuant to Section 19(b) of the Exchange Act, will result in more efficient and effective determinations as to the types of relationships that should preclude a finding of independence with respect to membership on a board committee that oversees executive compensation. We believe that because listed issuers frequently consult the exchanges regarding independence determinations, the exchanges will be in the best position to identify the types of relationships that are likely to compromise the ability of an issuer's compensation committee to make impartial determinations on executive compensation.

We acknowledge, however, that because exchanges compete for listings, they may have an incentive to propose standards that issuers will find less onerous. This could affect investor confidence in the degree of independent oversight of executive compensation at issuers listed on exchanges with less onerous standards and could also result in costs to exchanges that adopt relatively more rigorous standards, to the extent they lose issuer listings as a result.

In accordance with Section 10C(a)(1), Rule 10C–1(b)(1)(iii) exempts limited partnerships, companies in bankruptcy proceedings, registered open-end management investment companies and foreign private issuers that provide annual disclosures to shareholders of the reasons why the foreign private issuer does not have an independent compensation committee from the compensation committee member independence listing standards required under Rule 10C–1(a). With respect to the independence requirements of Rule 10C–1, we have not provided any exemptions for categories of issuers beyond those specified in Section 10C(a)(1). The final rule, however, exempts smaller reporting companies, controlled companies, security futures products and standardized options from all of the requirements of Rule 10C–1, including the independence requirements. Under Rule 10C–1, exchanges are provided the authority to propose additional exemptions for appropriate categories of issuers. An exchange that exercises this authority will incur costs to evaluate what exemptions to propose and to make any required rule filings pursuant to Section 19(b) of the Exchange Act.

We are implementing the disclosure requirements of Section 10C by adopting amendments to Item 407(e)(3) of Regulation S–K. Given the number of discretionary choices that we have made in implementing this provision of Section 10C, we discuss the amendments to Item 407 as a whole below.

2. Discretionary Amendments

As adopted, new Rule 10C–1 will direct the exchanges to adopt listing standards that apply to any committee of the board that oversees executive compensation, whether or not such committee performs other functions or is formally designated as a ''compensation committee.'' Some exchange listing standards currently require issuers to form compensation or equivalent committees, and others permit independent directors to oversee specified compensation matters in lieu of the formation of a compensation or equivalent committee. The final rule will also direct the exchanges to apply the required listing standards relating to director independence, consideration of a compensation adviser's independence and responsibility for the appointment, compensation and oversight of compensation advisers to those members of a listed issuer's board of directors who, in the absence of a board committee performing such functions, oversee executive compensation matters on behalf of the board of directors.[262] Several commentators supported our proposal to apply the Section 10C requirements to all board committees that oversee executive compensation, and also recommended that the requirements also apply to those independent directors who oversee executive compensation in lieu of a board committee.[263] We believe these aspects of the rule will help achieve the objectives of the statute and benefit listed issuers by providing clarity and reducing any uncertainty about the application of Section 10C. Moreover, this should benefit investors because it will limit the ability of listed issuers to avoid the compensation committee independence requirements under Section 10C simply by delegating oversight of executive compensation to a board committee that is not formally designated as the ''compensation committee,'' but performs that function or to directors acting outside of a formal committee structure.

If we did not apply Rule 10C–1 to apply the requirements relating to director independence, consideration of the independence of compensation advisers and responsibility for the appointment, compensation and oversight of compensation advisers to directors who oversee executive compensation matters in the absence of a board committee, issuers could be incentivized to seek to list on exchanges that do not require the formation of a compensation or equivalent committee in order to avoid having to comply with the compensation committee independence standards that would otherwise apply. Our decision to apply the requirements relating to director independence, consideration of the independence of compensation advisers and responsibility for the appointment, compensation and oversight of compensation advisers to these directors should minimize any such incentive. As a result, we believe this application also minimizes any potential costs that issuers might incur to alter their existing committee structure or seek to list on a different exchange to avoid having to comply with the new standards, as well as any related costs that exchanges would incur from any resulting loss of issuer listings, related fees, and trading volume. These impacts may not be significant, however, since the exchanges' existing requirements already impose independence requirements on directors who oversee executive compensation matters. Finally, we note that, in overseeing executive compensation matters, these independent directors are acting as the board of directors, and the same board processes that attend to other types of board decisions—e.g., scheduling meetings, preparing review materials, attending meetings, preparing and reviewing meeting minutes—also presumably attend to board decisions about executive compensation. Accordingly, we do not believe that the application of the requirements relating

[261] *See* letters from ABA and NYSE.

[262] With respect to these aspects of the rule, we have defined ''compensation committee'' to include those board members who oversee executive compensation matters on behalf of the board of directors in the absence of a board committee. In our discussion of the final rule throughout this release, references to an issuer's ''compensation committee'' include, unless the context otherwise requires, any committee of the board that performs functions typically performed by a compensation committee, including oversight of executive compensation, whether or not formally designated as a ''compensation committee,'' as well as, to the extent applicable, those members of a listed issuer's board of directors who oversee executive compensation matters on behalf of the board of directors in the absence of such a committee.

[263] *See, e.g.,* letters from Barnard, CFA and Railpen.

to director independence, consideration of the independence of compensation advisers and responsibility for the appointment, compensation and oversight of compensation advisers to directors who oversee executive compensation matters in the absence of a board committee will result in any disproportionate incremental burdens for issuers that do not have a compensation committee or any other board committee that oversees executive compensation.

As required by Section 10C(g), controlled companies are exempt from all requirements of Rule 10C–1 pursuant to final Rule 10C–1(b)(5)(ii). Rule 10C–1 as adopted includes a slightly broader definition of ''controlled company'' than the definition provided in Section 10C. Under Section 10C(g)(2) of the Exchange Act, a ''controlled company'' is defined as an issuer that is listed on an exchange and that holds an election for the board of directors of the issuer in which more than 50% of the voting power is held by an individual, a group or another issuer. We proposed to incorporate this definition into Rule 10C–1(c)(2). In response to comments that our proposed definition would not exempt listed issuers that would otherwise be controlled companies but for the fact that they do not hold director elections,[264] we have removed from the definition the phrase ''holds an election for the board of directors'' in order to align the definition in Rule 10C–1 more closely to the definition of controlled company currently used by the NYSE and Nasdaq. This change will eliminate any unnecessary compliance burdens for listed issuers that do not hold director elections but satisfy the definition of ''controlled company'' pursuant to listing standards of the NYSE, Nasdaq and other exchanges with a similar definition.

Under Rule 10C–1(b)(4), the exchanges are directed to adopt listing standards that require a compensation committee to take into account the five independence factors enumerated in Section 10C(b)(2) before selecting a compensation adviser. In addition to these five factors, we are including in the final rule one additional independence factor that must be considered before a compensation adviser is selected: any business or personal relationships between the executive officers of the issuer and the compensation adviser or the person employing the adviser. Several commentators supported requiring compensation committees to consider any business or personal relationship between an executive officer of the issuer and an adviser or the person employing the compensation adviser.[265] This would include, for example, situations where the chief executive officer of a listed issuer and the compensation adviser have a familial relationship or where the chief executive officer and the compensation adviser (or the adviser's employer) are business partners. We agree with commentators that such relationships would be relevant to an assessment of the independence of the compensation adviser and believe that adding this factor complements the five independence factors enumerated in Section 10C(b)(2). Adding this factor should help compensation committees reach better informed decisions in selecting compensation advisers since any business or personal relationship that a compensation adviser, or the person employing the adviser, may have with an executive officer may be relevant to assessing whether there is a conflict of interest. Section 10C(b) mandates that the independence factors to be considered must be competitively neutral among categories of compensation advisers and that compensation committees must be able to retain the services of members of any such category. We believe that the six factors included in the final rule, when considered as a whole, are competitively neutral and that this requirement will therefore not inhibit competition among categories of compensation advisers.

We have included an instruction to Rule 10C–1(b)(4) that provides that the compensation committee of a listed issuer is not required to consider the independence factors with respect to in-house counsel with whom the compensation committee consults or obtains advice. Several commentators noted that, as in-house legal counsel are employees of the issuer, they are not held out to be independent.[266] As such, the benefits of requiring the compensation committee to consider the independence factors with respect to in-house counsel would seem to be minimal. We do not believe that our determination to exclude in-house counsel from this required consideration will negatively impact competition among compensation advisers, as we do not believe compensation committees consider that in-house counsel serve in the same role as a compensation consultant or outside legal counsel.

As adopted, the final rule exempts security futures products and standardized options from the scope of Rule 10C–1. We believe that exempting security futures products and standardized options is appropriate because these securities are fundamentally different than the equity securities of an operating company. This exemption will benefit the issuers of these securities and the exchanges on which such securities trade by providing clarity and eliminating any regulatory uncertainty about the application of Section 10C to these products.

In addition, we are exempting smaller reporting companies from the requirements of Rule 10C–1. We appreciate that the burdens of complying with the listing standards mandated by Rule 10C–1 for listed smaller reporting companies may not be significant given that such issuers are already subject to listing standards requiring directors on compensation committees or directors determining or recommending executive compensation matters to be ''independent'' under the exchanges' general independence standards. We do believe, however, that exempting smaller reporting companies from the listing standards mandated by Rule 10C–1 can offer cost savings to these issuers to the extent that an exchange, in connection with the listing standards review required by Rule 10C–1, chooses to create a new independence standard for compensation committee members that is more rigorous than its existing standards—for example, a new standard could address personal or business relationships between members of the compensation committee and the listed issuer's executive officers. Issuers subject to the exchange's new standard may need to replace existing compensation committee members, and incur the associated costs, if they do not qualify as independent under the new standard. In addition, although listed smaller reporting companies do not often engage outside compensation consultants, there would be cost savings to these listed issuers from not having to comply with the listing standards involving the compensation committee's engagement and oversight of compensation advisers. For example, the exchanges are required to adopt listing standards that require the compensation committee to consider the six independence factors listed in Rule 10C–1(b)(4) before selecting a compensation adviser. To comply with these listing standards, compensation committees will likely need to create

[264] *See* letter from V&E.

[265] *See, e.g.,* letters from ABA, Better Markets, Merkl and USS.

[266] *See* letters from Davis Polk and S&C.

procedures for collecting and analyzing information about potential compensation advisers before they can receive advice from such advisers, which would require the listed issuers to incur costs. We expect, however, that a portion of these cost savings would likely be offset by the costs that smaller reporting companies may incur in order to comply with the new disclosure requirements in Item 407(e)(3)(iv) of Regulation S–K relating to compensation consultants' conflicts of interest.

We are adopting amendments to Item 407(e)(3) of Regulation S–K to implement the disclosure requirements of Section 10C(c)(2). Under these amendments, issuers subject to our proxy rules will be required to disclose whether the work of any compensation consultant that has played any role in determining or recommending the form or amount of executive and director compensation has raised a conflict of interest, and, if so, the nature of the conflict and how the conflict is being addressed. Issuers subject to our existing proxy disclosure rules must already discuss the role played by compensation consultants in determining or recommending the amount or form of executive and director compensation, including the nature and scope of their assignment and any material instructions or directions governing their performance under the engagement. The current item excludes from the disclosure requirement any role of compensation consultants limited to consulting on any broad-based plan that does not discriminate in scope, terms or operation in favor of executive officers or directors of the registrant and that is available generally to all salaried employees, or limited to providing information that either is not customized for a particular registrant or is customized based on parameters that are not developed by the compensation consultant, and about which the compensation consultant does not provide advice. We believe the amendments complement our existing disclosure requirements by increasing the transparency of issuers' policies regarding compensation consultant conflicts of interest for all issuers subject to the existing disclosure requirement.

The final amendments preserve the existing disclosure requirements under Item 407(e)(3), including the disclosure trigger in Item 407(e)(3)(iii) of ''any role'' played by the consultant and the disclosure exemption for compensation consulting services involving only broad-based, non-discriminatory plans and the provision of non-customized survey data. Some commentators suggested that retaining the existing disclosure trigger in Item 407(e)(3)(iii) and including a separate disclosure item within Item 407 to address the conflict of interest disclosure requirements of Section 10C(c)(2)(B) would be the better approach to implement Section 10C(c)(2) requirements.[267] Additionally, commentators contended that eliminating the disclosure exemptions in Item 407(e)(3)(iii) would be inconsistent with our past determination that consulting on broad-based plans or providing non-customized benchmark data did not raise conflict of interest concerns that warrant disclosure of the consultant's selection, terms of engagement or fees.[268] We agree with these commentators and believe that the amendment to Item 407(e)(3) that we are adopting, which retains the existing disclosure exemptions, is the better approach to implementing Section 10C(c)(2)'s requirements. By retaining the existing disclosure trigger and disclosure exemptions under Item 407(e)(3)(iii), the final amendments will require disclosure of conflicts of interest only when a compensation consultant's role is otherwise required to be disclosed. We believe this will promote efficiency by mitigating an issuer's compliance burden in situations where a compensation consultant does not provide ''analytical input, discretionary judgment or advice.''[269]

To promote comprehensive disclosure about compensation consultants, the amendments to Item 407(e)(3) extend the disclosure requirements of Section 10C(c)(2) to proxy and information statements where action is to be taken with respect to an election of directors, as well as to conflicts of interests for compensation consultants who play any role in determining or recommending the amount or form of director compensation. Existing Item 407(e)(3) already requires these proxy and information statements to include disclosure about any role of compensation consultants in determining or recommending the amount or form of executive compensation and director compensation, including the nature and scope of their assignment, any material instructions or directions governing their performance under the engagement, and specified information with respect to fees paid to the compensation consultants.

Several commentators supported applying the new disclosure requirements to all Exchange Act issuers subject to our proxy rules.[270] However, other commentators believed that this is not required by Section 10C and opposed extending the disclosure requirements to non-listed issuers.[271] We are expanding the statutory disclosure requirement to those categories of issuers that will not be subject to the listing standards adopted by the exchanges pursuant to Rule 10C–1, including non-listed issuers, smaller reporting companies and controlled companies, because we believe that timely disclosure of compensation consultants' conflicts of interests will enable investors in these categories of issuers to better monitor compensation committee performance and will help investors make better informed voting decisions with respect to the election of directors, including members of the compensation committee. In addition, this would promote consistent disclosure on these topics among reporting companies and should benefit investors by fostering comparability of disclosure of compensation practices across companies.

Non-listed issuers, smaller reporting companies and controlled companies may incur additional costs to develop more formalized selection processes than they otherwise would have absent such a disclosure requirement. For example, even though they will not be subject to the listing standard requiring compensation committees to consider independence factors before selecting a compensation adviser, in light of this disclosure requirement, at the time any compensation consultant is selected, compensation committees of non-listed issuers, smaller reporting companies and controlled companies may devote time and resources to analyzing and assessing the independence of the compensation consultant and addressing and resolving any conflicts of interest.[272] Although the disclosure

[267] *See, e.g.,* letter from ABA.

[268] *See* letters from ABA, Chamber and SCSGP.

[269] *See* letter from SCSGP.

[270] *See, e.g.,* letters from AON and Merkl.

[271] *See* letter from Debevoise.

[272] For purposes of the PRA, we estimated that the total annual increase in the paperwork burden for all companies to prepare the disclosure that would be required under the proposed amendments will be approximately 11,970 hours of in-house personnel time and approximately $1,596,000 for the services of outside professionals. One commentator asserted that some of the estimates we used to calculate the burden hours of the proposed amendments may be inaccurate, which could result in our underestimating the PRA burden of the final amendments. *See* letter from Chamber. As described in the discussion of the PRA, we received no alternative paperwork burden hour or cost estimates in response to our estimate of the paperwork burden in the Proposing Release. We believe our reduced paperwork burden estimate is

requirement does not prohibit a compensation committee from selecting a compensation consultant of its choosing, some committees may elect to engage new, alternative or additional compensation consultants after considering what disclosure might be required under our final rules. Such decisions could result in additional costs to issuers, including costs related to termination of existing services and search and engagement costs to retain new consultants. In addition, costs may increase if an issuer decides to engage multiple compensation consultants for services that had previously been provided by a single consultant. We believe these potential costs are likely to be limited because our existing disclosure rules already require disclosure of any role played by compensation consultants in determining or recommending the amount or form of executive and director compensation, including the nature and scope of their assignment, any material instructions or directions governing their performance under the engagement, and specified information with respect to fees paid to the compensation consultants. To the extent the new requirement to disclose compensation consultant conflicts of interest results in an issuer significantly modifying its consultant selection processes, we believe it would also likely result in such issuer making better-informed choices regarding compensation consultant selection.

To the extent that providing advice on director compensation raises a conflict of interest on the part of a compensation consultant, disclosure would be required in response to new Item 407(e)(3)(iv). Issuers are currently required to discuss in proxy and information statements the role played by compensation consultants in determining or recommending the amount or form of director compensation to the same extent that the disclosure is required regarding executive compensation. In light of the approach we are taking to the new disclosure requirement generally, which is to add the new requirement to the existing disclosure requirements using the existing triggers, we determined that the compensation consultant conflict of interest disclosure requirement should apply to director compensation in the same manner as executive compensation. We believe this will benefit investors by providing for more complete and consistent disclosures on how the board manages compensation-related conflicts of interest.

The amendments to Regulation S–K may promote efficiency and competitiveness of the U.S. capital markets by increasing the transparency of executive compensation decision-making processes. Increased transparency may improve the ability of investors to make better informed voting and investment decisions, which may encourage more efficient capital allocation and formation. Some commentators asserted that the increased disclosure should improve the ability of investors to monitor performance of directors responsible for overseeing compensation consultants, thus enabling them to make more informed voting and investment decisions.[273]

The amendments also may affect competition among compensation consultants. By requiring disclosure of the existence of compensation consultant conflicts of interest and how those conflicts of interest are addressed, the new disclosure requirement may lead compensation committees to engage in more thorough and deliberative analyses of adviser independence. This could result in the selection of compensation advisers that are more independent or impartial than might otherwise be chosen, which, in turn, could promote more effective executive compensation practices. The amendments may also incentivize compensation consultants to adopt policies that serve to minimize any conflicts of interest and for compensation committees to avoid hiring consultants perceived as having a conflict of interest.

V. Final Regulatory Flexibility Act Analysis

This Final Regulatory Flexibility Analysis (''FRFA'') has been prepared in accordance with the Regulatory Flexibility Act.[274] This FRFA relates to new Exchange Act Rule 10C–1, which will require the exchanges to prohibit the listing of an equity security of an issuer that is not in compliance with several enumerated requirements relating to the issuer's compensation committee, and to amendments to Item 407(e)(3) of Regulation S–K, which will require new disclosure from issuers regarding any conflict of interest raised by the work of a compensation consultant that has played a role in determining or recommending the form or amount of executive and director compensation.

A. Need for the Amendments

We are adopting the new rule and rule amendments to implement Section 10C of the Exchange Act. Exchange Act Rule 10C–1 directs the exchanges to prohibit the listing of the equity securities of any issuer that does not comply with Section 10C's compensation committee and compensation adviser requirements. The amendments to Regulation S–K will require issuers to provide certain disclosures regarding their use of compensation consultants and how they address compensation consultant conflicts of interest.

B. Significant Issues Raised by Public Comments

In the Proposing Release, we requested comment on any aspect of the IRFA, including the number of small entities that would be affected by the proposed rules, the nature of the impact, how to quantify the number of small entities that would be affected, and how to quantify the impact of the proposed rule and amendments. We did not receive comments specifically addressing the IRFA. However, some commentators addressed aspects of the proposed rules that could potentially affect small entities. In particular, one commentator expressed concern that smaller issuers may experience difficulty in locating qualified candidates to serve on compensation committees who could meet the independence standards that will be developed by the exchanges.[275] This commentator advocated that smaller companies should be exempted from all or parts of the amendments.

C. Small Entities Subject to the Final Rules

The final rules will affect some companies that are small entities. The Regulatory Flexibility Act defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.''[276] The Commission's rules define ''small business'' and ''small organization'' for purposes of the Regulatory Flexibility Act for each of the types of entities regulated by the Commission. Exchange Act Rule 0–10(e)[277] provides that the term ''small business'' or ''small organization,'' when referring to an exchange, means any exchange that: (1) Has been exempted from the reporting requirements of Exchange Act Rule

reasonable in light of the modifications we have made to the proposals to reduce the compliance burden on issuers.

[273] *See, e.g.,* letters from CalSTRS and FLSBA.

[274] 5 U.S.C. 603.

[275] *See* letter from ABA.

[276] 5 U.S.C. 601(6).

[277] 17 CFR 240.0–10(e).

601;[278] and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization, as defined under Exchange Act Rule 0–10. No exchanges are small entities because none meet these criteria. Securities Act Rule 157[279] and Exchange Act Rule 0–10(a)[280] define a company, other than an investment company, to be a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year. The final rules will affect small entities that have a class of equity securities that are registered under Section 12 of the Exchange Act. We estimate that there are approximately 457 such registrants, other than registered investment companies, that may be considered small entities. An investment company, including a business development company, is considered to be a ''small business'' if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[281] We believe that the amendments to Regulation S–K will affect some small entities that are business development companies that have a class of securities registered under Section 12 of the Exchange Act. We estimate that there are approximately 28 business development companies that may be considered small entities.

D. Reporting, Recordkeeping and Other Compliance Requirements

Under new Exchange Act Rule 10C–1, the exchanges will be directed to prohibit the listing of an equity security of an issuer that is not in compliance with Section 10C's compensation committee and compensation adviser requirements. These requirements relate to:

- The independence of compensation committee members;
- The authority of the compensation committee to retain compensation advisers;
- The compensation committee's responsibility to assess factors that affect the independence of compensation advisers before their selection by the compensation committee; and
- The compensation committee's responsibility for the appointment, compensation, and oversight of the work of compensation advisers retained by the compensation committee; and funding for consultants and other advisers retained by the compensation committee.

Rule 10C–1 will not impose any reporting or recordkeeping obligations on the exchanges, or any issuers with equity securities listed on an exchange. Furthermore, the rule does not require a listed issuer to establish or maintain a compensation committee. As discussed in more detail below, we have exempted smaller reporting companies from the requirements of Rule 10C–1. We do not believe the new rule will have a significant impact on small entities because the listing requirements will apply only to issuers that have equity securities listed on an exchange and that are not smaller reporting companies.[282] All of the exchanges generally impose a combination of quantitative requirements such as market capitalization, minimum revenue, and shareholder equity thresholds that an issuer must satisfy in order to be listed on the exchange. Consequently, the substantial majority of small entities are not listed on an exchange but are quoted on the OTC Bulletin Board or the OTC Markets Group.[283] Rule 10C–1 will not apply to the OTC Bulletin Board or the OTC Markets Group, and therefore small entities whose securities are quoted on these interdealer quotation systems would not need to comply with any listing standards developed under the rule by the exchanges. Small entities that are listed on an exchange and that are not smaller reporting companies would generally need to comply with the standards adopted by the exchange pursuant to Rule 10C–1 if they wish to have their equity securities listed on the exchange. Small entities subject to these listing standards may need to spend additional time and incur additional costs to comply with these standards. Consistent with Section 10C(f)(3), the final rule will allow the exchanges flexibility to propose exemptions for small entities, subject to our review and approval under the Exchange Act Section 19(b) rule filing process.

The amendments to Item 407(e)(3) of Regulation S–K will impose some reporting and recordkeeping obligations on small entities. Under the amendments, an issuer will be required to disclose whether the work of any compensation consultant that has played a role in determining or recommending the amount or form of executive and director compensation has raised any conflict of interest and, if so, the nature of the conflict and how the conflict is being addressed. This disclosure requirement will apply equally to both large and small issuers. One commentator has noted that many small entities do not use the services of a compensation consultant,[284] which should significantly minimize the impact of the reporting and recordkeeping requirements under the amendments on small entities.

E. Agency Action to Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposals, we considered the following alternatives:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.

In connection with Exchange Act Rule 10C–1, we considered, but did not establish, different compliance requirements, or an exemption, for small entities. As noted above, very few small entities list their securities on an exchange. The substantial majority of small entities with publicly held equity

[278] 17 CFR 242.601.

[279] 17 CFR 230.157.

[280] 17 CFR 240.0–10(a).

[281] 17 CFR 270.0–10(a).

[282] Based on data obtained from the Thomson Financial's Worldscope database, we estimate that as of December 31, 2010, there were two exchange-listed small entities that would not qualify as a smaller reporting company.

[283] Based on information retrieved from the Thomson Financial's Worldscope database, we estimate that as of December 31, 2010, there were less than twelve issuers that had total assets of $5 million or less listed on an exchange.

In 2011, the Commission approved a proposal from NASDAQ OMX BX to create a new listing market, the BX Venture Market, which allows issuers meeting minimal quantitative requirements—including those with fewer than $5 million in assets—to list on that exchange. A BX Venture Market-listed company is required to meet qualitative requirements that are, in many respects, similar to those required for listing on Nasdaq or other exchanges, including a requirement to have independent directors make decisions regarding the compensation of executive officers. *See* Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto to Create a Listing Market on the Exchange, Release No. 34–64437 (May 6, 2011) [76 FR 27710]. We understand that this new market has not yet listed any issuers or become operational. Small entities eligible to list on this market that are not smaller reporting companies would be subject to the listing standards required by Rule 10C–1.

[284] *See* letter from ABA.

securities are quoted on the OTC Bulletin Board and the OTC Markets Group. As these interdealer quotation systems are not affected by Rule 10C–1, the substantial majority of small entities will not be affected by the requirements under the rule.

In addition, we are providing an exemption from the requirements in Rule 10C–1 for smaller reporting companies. We estimate that as of December 31, 2010, the most recent data available, most of the small entities that were listed on an exchange would qualify as a smaller reporting company.[285] Smaller reporting companies that are listed on an exchange are already subject to listing standards requiring directors on compensation committees or directors determining or recommending executive compensation matters to be ''independent'' under the exchanges' general independence standards. Accordingly, we do not believe that the additional burdens of complying with Rule 10C–1 are warranted for smaller reporting companies.

In addition, under Rule 10C–1, the exchanges will be expressly authorized to exempt particular categories of issuers from the requirements of Section 10C and particular relationships from the compensation committee membership requirements of Section 10C(a), taking into account the potential impact of the requirements on smaller reporting issuers. Because of the close relationship and frequent interaction between the exchanges and their listed issuers, we believe the exchanges will be in the best position to determine additional types of issuers, including any small entities that are not smaller reporting companies, that should be exempted from the listing requirements under the rule.

In connection with the amendments to Regulation S–K, we considered alternatives, including establishing different compliance or reporting requirements that take into account the resources available to small entities, clarifying or simplifying compliance and reporting requirements under the amendments for small entities, using performance rather than design standards, and exempting small entities from all or part of the amendments. We considered, but did not establish, different compliance requirements, or an exemption, for small entities. Although we believe it is appropriate to exempt smaller reporting companies from Rule 10C–1 because we do not believe that the additional burdens of complying with Rule 10C–1 are warranted for smaller reporting companies, we are unable to reach the same conclusion with respect to the disclosure requirements of amended Item 407(e)(3).

In our view, mandating uniform and comparable disclosures for all issuers subject to our proxy rules is consistent with the statute and will promote investor protection. We believe that investors have an interest in, and would benefit from disclosure regarding, conflicts of interest involving compensation consultants, to the extent that they are used by small entities. Several commentators opposed providing an exemption to small issuers and noted that the required disclosure would provide investors with additional information that would allow them to make better informed investment and voting decisions.[286] Different compliance requirements or an exemption from the amendments to Regulation S–K for small entities would interfere with achieving the goal of enhancing the information provided to all investors.

The amendments to Regulation S–K clarify, consolidate and simplify the compliance and reporting requirements for all entities, including small entities. Under the amendments, disclosure will only be required if a compensation consultant plays a role in determining or recommending the form or amount of executive and director compensation and the compensation consultant's work raises a conflict of interest. Although we believe the disclosure requirements are clear and straightforward, we have attempted to further clarify, consolidate and simplify the compliance and reporting requirements, by including an instruction to the amendments to provide guidance to issuers as to when a conflict of interest may be present that would require disclosure.

Final Rule 10C–1 uses a mix of performance and design standards. We are not specifying the procedures or arrangements an issuer or compensation committee must develop to comply with the listing standards required by Rule 10C–1, but compensation committees will be required to consider the factors specified in Rule 10C–1(b)(4) when conducting the required independence assessments. The amendments to Regulation S–K employ design standards rather than performance standards, as Section 10C(c)(2) mandates the specific disclosures that must be provided. Moreover, based on our past experience, we believe specific disclosure requirements will promote consistent and comparable disclosure among all companies, and the amendments are intended to result in more comprehensive and clear disclosure.

VI. Statutory Authority and Text of the Amendments

The amendments contained in this release are being adopted under the authority set forth in Sections 6, 7, 10, and 19(a) of the Securities Act and Sections 3(b), 10C, 12, 14, 23(a) and 36 of the Exchange Act.

List of Subjects in 17 CFR Parts 229 and 240

Reporting and recordkeeping requirements, Securities.

Text of the Amendments

For the reasons set out in the preamble, the Commission amends title 17, chapter II, of the Code of Federal Regulations as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 1. The general authority citation for part 229 is revised and the sectional authorities are removed to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78*l,* 78m, 78n, 78n-1, 78o, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

■ 2. Section 229.407 is amended by adding paragraph (e)(3)(iv) and an instruction to paragraph (e)(3)(iv) to read as follows:

§ 229.407 (Item 407) Corporate governance.

* * * * *

(e) * * *

(3) * * *

(iv) With regard to any compensation consultant identified in response to Item 407(e)(3)(iii) whose work has raised any conflict of interest, disclose the nature of the conflict and how the conflict is being addressed.

Instruction to Item 407(e)(3)(iv).

For purposes of this paragraph (e)(3)(iv), the factors listed in § 240.10C–1(b)(4)(i) through (vi) of this chapter are

[285] Based on data obtained from the Thomson Financial's Worldscope database, we estimate that as of December 31, 2010, there were two exchange-listed small entities that would not qualify as a smaller reporting company.

[286] *See, e.g.,* letters from CalPERS, FLSBA and RailPen.

among the factors that should be considered in determining whether a conflict of interest exists.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The general authority citation for Part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78j–3, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.;* and 18 U.S.C. 1350, and 12 U.S.C. 5221(e)(3), unless otherwise noted.

* * * * *

■ 4. Add an undesignated center heading following § 240.10A–3 to read as follows:

Requirements Under Section 10C

■ 5. Add § 240.10C–1 immediately following the new undesignated center heading to read as follows:

§ 240.10C–1 Listing standards relating to compensation committees.

(a) Pursuant to section 10C(a) of the Act (15 U.S.C. 78j–3(a)) and section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111–203, 124 Stat. 1900):

(1) *National securities exchanges.* The rules of each national securities exchange registered pursuant to section 6 of the Act (15 U.S.C. 78f), to the extent such national securities exchange lists equity securities, must, in accordance with the provisions of this section, prohibit the initial or continued listing of any equity security of an issuer that is not in compliance with the requirements of any portion of paragraph (b) or (c) of this section.

(2) *National securities associations.* The rules of each national securities association registered pursuant to section 15A of the Act (15 U.S.C. 78o-3), to the extent such national securities association lists equity securities in an automated inter-dealer quotation system, must, in accordance with the provisions of this section, prohibit the initial or continued listing in an automated inter-dealer quotation system of any equity security of an issuer that is not in compliance with the requirements of any portion of paragraph (b) or (c) of this section.

(3) *Opportunity to cure defects.* The rules required by paragraphs (a)(1) and (a)(2) of this section must provide for appropriate procedures for a listed issuer to have a reasonable opportunity to cure any defects that would be the basis for a prohibition under paragraph (a) of this section, before the imposition of such prohibition. Such rules may provide that if a member of a compensation committee ceases to be independent in accordance with the requirements of this section for reasons outside the member's reasonable control, that person, with notice by the issuer to the applicable national securities exchange or national securities association, may remain a compensation committee member of the listed issuer until the earlier of the next annual shareholders meeting of the listed issuer or one year from the occurrence of the event that caused the member to be no longer independent.

(4) *Implementation.* (i) Each national securities exchange and national securities association that lists equity securities must provide to the Commission, no later than 90 days after publication of this section in the **Federal Register**, proposed rules or rule amendments that comply with this section. Each submission must include, in addition to any other information required under section 19(b) of the Act (15 U.S.C. 78s(b)) and the rules thereunder, a review of whether and how existing or proposed listing standards satisfy the requirements of this rule, a discussion of the consideration of factors relevant to compensation committee independence conducted by the national securities exchange or national securities association, and the definition of independence applicable to compensation committee members that the national securities exchange or national securities association proposes to adopt or retain in light of such review.

(ii) Each national securities exchange and national securities association that lists equity securities must have rules or rule amendments that comply with this section approved by the Commission no later than one year after publication of this section in the **Federal Register**.

(b) *Required standards.* The requirements of this section apply to the compensation committees of listed issuers.

(1) *Independence.* (i) Each member of the compensation committee must be a member of the board of directors of the listed issuer, and must otherwise be independent.

(ii) *Independence requirements.* In determining independence requirements for members of compensation committees, the national securities exchanges and national securities associations shall consider relevant factors, including, but not limited to:

(A) The source of compensation of a member of the board of directors of an issuer, including any consulting, advisory or other compensatory fee paid by the issuer to such member of the board of directors; and

(B) Whether a member of the board of directors of an issuer is affiliated with the issuer, a subsidiary of the issuer or an affiliate of a subsidiary of the issuer.

(iii) *Exemptions from the independence requirements.* (A) The listing of equity securities of the following categories of listed issuers is not subject to the requirements of paragraph (b)(1) of this section:

(*1*) Limited partnerships;

(*2*) Companies in bankruptcy proceedings;

(*3*) Open-end management investment companies registered under the Investment Company Act of 1940; and

(*4*) Any foreign private issuer that discloses in its annual report the reasons that the foreign private issuer does not have an independent compensation committee.

(B) In addition to the issuer exemptions set forth in paragraph (b)(1)(iii)(A) of this section, a national securities exchange or a national securities association, pursuant to section 19(b) of the Act (15 U.S.C. 78s(b)) and the rules thereunder, may exempt from the requirements of paragraph (b)(1) of this section a particular relationship with respect to members of the compensation committee, as each national securities exchange or national securities association determines is appropriate, taking into consideration the size of an issuer and any other relevant factors.

(2) *Authority to retain compensation consultants, independent legal counsel and other compensation advisers.* (i) The compensation committee of a listed issuer, in its capacity as a committee of the board of directors, may, in its sole discretion, retain or obtain the advice of a compensation consultant, independent legal counsel or other adviser.

(ii) The compensation committee shall be directly responsible for the appointment, compensation and oversight of the work of any compensation consultant, independent legal counsel and other adviser retained by the compensation committee.

(iii) Nothing in this paragraph (b)(2) shall be construed:

(A) To require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant, independent legal counsel

or other adviser to the compensation committee; or

(B) To affect the ability or obligation of a compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee.

(3) *Funding.* Each listed issuer must provide for appropriate funding, as determined by the compensation committee, in its capacity as a committee of the board of directors, for payment of reasonable compensation to a compensation consultant, independent legal counsel or any other adviser retained by the compensation committee.

(4) *Independence of compensation consultants and other advisers.* The compensation committee of a listed issuer may select a compensation consultant, legal counsel or other adviser to the compensation committee only after taking into consideration the following factors, as well as any other factors identified by the relevant national securities exchange or national securities association in its listing standards:

(i) The provision of other services to the issuer by the person that employs the compensation consultant, legal counsel or other adviser;

(ii) The amount of fees received from the issuer by the person that employs the compensation consultant, legal counsel or other adviser, as a percentage of the total revenue of the person that employs the compensation consultant, legal counsel or other adviser;

(iii) The policies and procedures of the person that employs the compensation consultant, legal counsel or other adviser that are designed to prevent conflicts of interest;

(iv) Any business or personal relationship of the compensation consultant, legal counsel or other adviser with a member of the compensation committee;

(v) Any stock of the issuer owned by the compensation consultant, legal counsel or other adviser; and

(vi) Any business or personal relationship of the compensation consultant, legal counsel, other adviser or the person employing the adviser with an executive officer of the issuer.

Instruction to paragraph (b)(4) of this section: A listed issuer's compensation committee is required to conduct the independence assessment outlined in paragraph (b)(4) *of this section* with respect to any compensation consultant, legal counsel or other adviser that provides advice to the compensation committee, other than in-house legal counsel.

(5) *General exemptions.* (i) The national securities exchanges and national securities associations, pursuant to section 19(b) of the Act (15 U.S.C. 78s(b)) and the rules thereunder, may exempt from the requirements of this section certain categories of issuers, as the national securities exchange or national securities association determines is appropriate, taking into consideration, among other relevant factors, the potential impact of such requirements on smaller reporting issuers.

(ii) The requirements of this section shall not apply to any controlled company or to any smaller reporting company.

(iii) The listing of a security futures product cleared by a clearing agency that is registered pursuant to section 17A of the Act (15 U.S.C. 78q–1) or that is exempt from the registration requirements of section 17A(b)(7)(A) (15 U.S.C. 78q–1(b)(7)(A)) is not subject to the requirements of this section.

(iv) The listing of a standardized option, as defined in § 240.9b–1(a)(4), issued by a clearing agency that is registered pursuant to section 17A of the Act (15 U.S.C. 78q–1) is not subject to the requirements of this section.

(c) *Definitions.* Unless the context otherwise requires, all terms used in this section have the same meaning as in the Act and the rules and regulations thereunder. In addition, unless the context otherwise requires, the following definitions apply for purposes of this section:

(1) In the case of foreign private issuers with a two-tier board system, the term *board of directors* means the supervisory or non-management board.

(2) The term *compensation committee* means:

(i) A committee of the board of directors that is designated as the compensation committee; or

(ii) In the absence of a committee of the board of directors that is designated as the compensation committee, a committee of the board of directors performing functions typically performed by a compensation committee, including oversight of executive compensation, even if it is not designated as the compensation committee or also performs other functions; or

(iii) For purposes of this section other than paragraphs (b)(2)(i) and (b)(3), in the absence of a committee as described in paragraphs (c)(2)(i) or (ii) of this section, the members of the board of directors who oversee executive compensation matters on behalf of the board of directors.

(3) The term *controlled company* means an issuer:

(i) That is listed on a national securities exchange or by a national securities association; and

(ii) Of which more than 50 percent of the voting power for the election of directors is held by an individual, a group or another company.

(4) The terms *listed* and *listing* refer to equity securities listed on a national securities exchange or listed in an automated inter-dealer quotation system of a national securities association or to issuers of such securities.

(5) The term *open-end management investment company* means an open-end company, as defined by Section 5(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–5(a)(1)), that is registered under that Act.

By the Commission.

Dated: June 20, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–15408 Filed 6–26–12; 8:45 am]

BILLING CODE 8011–01–P

FEDERAL REGISTER

Vol. 77 Wednesday,

No. 124 June 27, 2012

Part IV

The President

Executive Order 13617—Blocking Property of the Government of the Russian Federation Relating to the Disposition of Highly Enriched Uranium Extracted From Nuclear Weapons

Federal Register
Vol. 77, No. 124
Wednesday, June 27, 2012

Presidential Documents

Title 3—

The President

Executive Order 13617 of June 25, 2012

Blocking Property of the Government of the Russian Federation Relating to the Disposition of Highly Enriched Uranium Extracted From Nuclear Weapons

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), and section 301 of title 3, United States Code,

I, BARACK OBAMA, President of the United States of America, in view of the policies underlying Executive Order 12938 of November 14, 1994, and Executive Order 13085 of May 26, 1998, and the restrictions put in place pursuant to Executive Order 13159 of June 21, 2000, find that the risk of nuclear proliferation created by the accumulation of a large volume of weapons-usable fissile material in the territory of the Russian Federation continues to constitute an unusual and extraordinary threat to the national security and foreign policy of the United States, and hereby declare a national emergency to deal with that threat. I hereby order:

Section 1. A major national security goal of the United States is to ensure that fissile material removed from Russian nuclear weapons pursuant to various arms control and disarmament agreements is dedicated to peaceful uses, subject to transparency measures, and protected from diversion to activities of proliferation concern. As reflected in Executive Order 13085, the full implementation of the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons, dated February 18, 1993, and related contracts and agreements (collectively, the ''HEU Agreements'') is essential to the attainment of this goal. The HEU Agreements provide for the conversion of approximately 500 metric tons of highly enriched uranium contained in Russian nuclear weapons into low-enriched uranium for use as fuel in commercial nuclear reactors. In furtherance of our national security goals, all heads of departments and agencies of the United States Government shall continue to take all appropriate measures within their authority to further the full implementation of the HEU Agreements.

Sec. 2. Government of the Russian Federation assets directly related to the implementation of the HEU Agreements currently may be subject to attachment, judgment, decree, lien, execution, garnishment, or other judicial process, thereby jeopardizing the full implementation of the HEU Agreements to the detriment of U.S. foreign policy. In order to ensure the preservation and proper and complete transfer to the Government of the Russian Federation of all payments due to it under the HEU Agreements, and except to the extent provided in regulations, orders, directives, or licenses that may be issued pursuant to this order, or that were issued pursuant to Executive Order 13159 of June 21, 2000, all property and interests in property of the Government of the Russian Federation directly related to the implementation of the HEU Agreements that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States persons, including any foreign branch, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in. Unless licensed or authorized pursuant to this order,

or Executive Order 13159 of June 21, 2000, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property or interest in property blocked pursuant to this order.

Sec. 3. (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 4. For the purposes of this order:

(a) the term ''person'' means an individual or entity;

(b) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States; and

(d) the term ''Government of the Russian Federation'' means the Government of the Russian Federation, any political subdivision, agency, or instrumentality thereof, and any person owned or controlled by, or acting for or on behalf of, the Government of the Russian Federation.

Sec. 5. (a) The Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Energy, and, as appropriate, other agencies, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their statutory authority to carry out the provisions of this order.

(b) Nothing contained in this order shall relieve a person from any requirement to obtain a license or other authorization from any department or agency of the United States Government in compliance with applicable laws and regulations subject to the jurisdiction of the department or agency.

Sec. 6. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to submit the recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

Sec. 7. 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,
June 25, 2012.

[FR Doc. 2012–15954
Filed 6–26–12; 11:15 am]
Billing code 3295–F2–P

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H.R. 5883/P.L. 112–135

To make a technical correction in Public Law 112-108. (June 21, 2012; 126 Stat. 384)

H.R. 5890/P.L. 112–136

To correct a technical error in Public Law 112-122. (June 21, 2012; 126 Stat. 385)

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